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The Suppressions of the "Chicago Times" and the "New York World" and their Constitutional Implications

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THE SUPPRESSIONS OF THE CHICAGO TIMES AND
THE NEW YORK WORLD AND THEIR
CONSTITUTIONAL IMPLICATIONS

A Thesis

Presented to

The Faculty of the Department of History
The College of William and Mary in Virginia

In Partial Fulfillment

Of the Requirements for the Degree of
Master of Arts

by

Laurie Ann Johnson

1985


APPROVAL SHEET

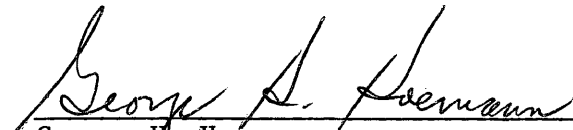
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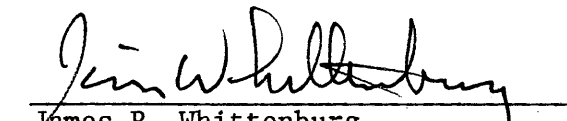
Master of Arts


Laurie Ann Johnson

Approved, December 1985


Ludwell H. Johnson


George H. Hoemann


James P. Whittenburg

For my parents

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ABSTRACT

Freedom of the press represents one of the cornerstones of American liberty and our democratic tradition. During peacetime, a free and uninhibited press is viewed as a sacred institution, but under the stress of wartime conditions, high-spirited and unregulated journalistic activity can be detrimental to national security. Where, though, should the line be drawn between constructive and destructive criticism during wartime? Such was the dilemma faced by Abraham Lincoln throughout the Civil War years.

In this paper, freedom of the press during the Civil War is addressed in regard to the suppressions of the Chicago Times and the New York World. Chapter I is a study of the Anglo-American heritage of freedom of the press, presenting both legal precedents for press liberty and governmental constraints imposed upon its operation, from the introduction of the printing press to England in 1476 to the eve of the American Civil War.

Chapter II recounts the events leading up to the suspensions of the Times and World and examines the responses of each newspaper's editor as well as other prominent journalists of the day to the actions of the Lincoln administration. In Chapter III, Abraham Lincoln's views of the press and constitutional powers during wartime are explored and related to the two suppressions. It concludes that although the constitutionality of the suspensions remains a matter of debate, the actions taken against the Chicago Times and New York World were hasty and resulted in more embarrassment to the Lincoln administration than the newspaper articles that prompted the suppressions.

THE SUPPRESSIONS OF THE CHICAGO TIMES AND THE NEW YORK WORLD
AND THEIR CONSTITUTIONAL IMPLICATIONS

CHAPTER I
THE ANGLO-AMERICAN HERITAGE OF FREEDOM OF THE PRESS
1476 - 1860

Censorship existed in England even before the invention of the printing press.¹ This censorship came in the form of the medieval statute of Scandalum Magnatum (1273), which Parliament enacted during the reign of Edward I. The statute designated as a crime the speaking of any false news "whereby discord or occasion of discord or slander [might] grow between the King and his People or the Great Men of the Realm."² In this way, Scandalum Magnatum fostered obedience to the king and maintained social order. It also influenced laws pertaining to the written and printed word after William Caxton established a printing press in London in 1476.

Until the repudiation of the Roman Catholic Church by Henry VIII and Parliament in 1534, church officials controlled the English press, inspecting printed materials for heretical content.³ When the Tudor king denied the authority of the Pope and his ecclesiastical underlings, the power of press regulation was transferred from church- to crown-appointed censors. "Beginning with Henry, the distinction between church and state, between heresy and treason, between nonconformance and sedition becomes increasingly obscure. An attack on

Henry's church was an attack on Henry's government."⁴ Henry initiated his takeover of the press industry with the issuance of a list of prohibited books in 1529, followed by the enactment of a limited licensing system under the auspices of a solely secular administration. In 1538, the Tudor king presented a proclamation designed to regulate censorship and enforce the licensing of all books, not just those of a religious nature. Members of Henry's Privy Council replaced ecclesiastical licensers and worked to suppress any threat to the kingdom's safety. Thus began the practice of royal control over printing in England.

In the period of social and political instability that accompanied Henry's abolition of Catholicism and his great extension of royal influence, control over the press was a means of preserving internal security. Parliament in 1542-43 "was induced to give sweeping statutory sanction to the absolute authority of the crown to regulate the press and every other means of public discussion."⁵ The Tudor penchant for press control continued under Henry's successor as in 1556, Queen Mary chartered the Stationers' Company, an organization of printers, booksellers, bookbinders, and type-founders brought together to work with the crown in regulating the industry for the benefit of both interests. It was a monopolistic and profitable system as all legitimate printers were to be members of the Company. Before printing anything, each printer had to secure and pay for the permission of the company officers (master printers). In addition, the Stationers' Company was empowered to hunt down violators of company procedure, searching the premises of any suspected printer and fining or impri-

soning those resisting their efforts.⁶

In 1559, Elizabeth confirmed the Stationers' charter and prohibited all printing outside of London, except for that done at the universities of Oxford and Cambridge. A Star Chamber Ordinance of 1586 proved the most inhibiting press measure to date, stating that all books were to be licensed by the Archbishop of Canterbury or the Bishop of London, limiting the number of master printers to twenty, and assigning to the Stationers' Company inquisitorial powers over printers and booksellers.⁷ The transition from the Tudor to Stuart monarchies marked a definite decline in the effectiveness of royal control over the press. The Tudors, "through royal proclamations, licenses, patents of monopoly, Orders in Council, and Star Chamber decrees," successfully checked subversive elements in society, but the Stuarts failed to find the same success in the operation of "the elaborate machinery which they had inherited from their predecessors."⁸

According to Frederick S. Siebert in Freedom of the Press in England, 1476-1776, the Tudors had no qualms about the "juristic bases of their powers; it was sufficient that they exercised them de facto. The Stuarts, however, were frequently disturbed in their claims and attempted to establish their authority de jure."⁹ In order to legitimate their substantial powers, the Stuarts promoted the theory of divine right rule. Although the Stuart kings may have questioned the basis of their authority, they showed little restraint in the exercise of it in relation to the press. An exemplary case of Stuart and Star Chamber severity involved William Prynne and his book,

Histrion-mastix, or a Scourge for Stage Players (1632). The work condemned plays, dancing, Christmas celebrations, bonfires, and maypoles, among other festivities.¹⁰ The Star Chamber construed it as libelous, for the Queen had recently taken part in a pastoral play at Somerset House and "the court considered that in Prynne's reference to the fact that lewd women and whores were accustomed to take part in plays, the inference was made, according to the prosecution, that a seditious libel had been made against the Queen."¹¹ Prynne was found guilty of the charge and was sentenced to lose both ears and to be imprisoned, fined 5,000, and disbarred from the legal profession.¹² The Long Parliament later acquitted the earshorn Prynne, claiming the illegality of his trial as grounds for his release. Unlike the licensing and censorship laws enforced by the Tudors affecting materials prior to publication, the Prynne case involved the law of seditious libel, making printers and writers accountable for works already published. Until 1695, this dual regulation (inspecting materials both before and after printing) was in effect.

The Star Chamber's abolition in 1641 ushered in a significant, if brief, period of press freedom. Over 30,000 political pamphlets are said to have been printed from the years 1640 to 1660, representing an unprecedented explosion of journalistic and literary activity.¹³ The Long Parliament found the printers to have abused their printing privileges during this period and deemed that new press legislation was necessary. The Ordinance for the Regulation of Printing (June 14, 1643) officially killed the Star Chamber by substituting members of Parliament for court-appointed officers. Parliament's assumption of

jurisdiction over all press operations likewise undermined royal prerogative. The methods for press control, however, continued along established Tudor guidelines as Parliament allied itself with the Stationers' Company, protecting Stationers' monopolies in return for its assistance in the enforcement of licensing laws. The system appeared effective in theory, but in practice "even the combined activity of the Lords, Commons, and Stationers' Company could not suppress the printers of London who for three years had enjoyed a comparative freedom from regulation."¹⁴

In response to the 1643 parliamentary act, John Milton wrote his Areopagitica or plea "For the Liberty of Unlicensed Printing," in which he appealed to the legislative body for relief from censorship prior to publication. Milton saw danger in a licensing system that allowed censors to reject material deemed unintelligible or unpleasant. New and innovative ideas could easily be suppressed in this subjective censorship process; only a free and responsible press would ensure the promulgation of knowledge and truth:

And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting to mis-doubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?...For who knows not that Truth is strong, next to the Almighty; she needs no policies, nor stratagems, nor licensings to make her victorious.¹⁵

Despite his passionate words, Parliament disregarded Milton's plea. The next major piece of press legislation to be enacted during the Interregnum came in 1649 following the execution of Charles I. The reporting of this newsworthy event was of great concern to members

of Parliament who feared the repercussions of anti-Parliament factions. A committee was formed in the House of Commons to suppress printed works already issued as well as those forthcoming concerning Charles' trial and execution. Some months later in September of 1649, Parliament passed a new printing act, characterized by a stringent licensing system, heavy fines for violation, a £300 bond to be paid by printers for the privilege of publishing works, and the suppression of all previously licensed news-books (precursors of the modern newspaper). Enforcement of the act was erratic and a number of supposedly blacklisted journals continued to be printed.

As Lord Protector, Oliver Cromwell implemented his own system of press regulation in 1655, investing the Council of State with the chief regulatory duties formerly performed by the Stationers' Company. This scheme of press control existed until the demise of the Protectorate in 1660, a year that marks the end of a chaotic era of English political as well as press history:

Restrictions more despotic than those of the Star Chamber followed by periods with no discernible regulations, enforcement at one moment stringent and at the next completely absent, hand-in-glove cooperation with the Stationers' Company and a few months later the complete exclusion of the trade organization from official duties, licensing and then on licensing...all these conditions are to be found during the decade (1650-1660) preceding the restoration of the monarchy.¹⁶

The restoration of the monarchy brought with it the restoration of strict press controls. The Printing Act of 1662 embraced tenets similar to those found in the Star Chamber decrees of 1586 and 1637, yet it denied the reconstruction of that institution. The number of master printers in the Stationers' Company was again limited to twenty

(the current number of 59 was to be reduced as printers passed away), printing was limited to the cities of London, Oxford, Cambridge, and York, and all publications were to be licensed before issuance.¹⁷

In 1663, the Restoration government appointed Roger L'Estrange as its official censor. In his quest for purging the printing industry of its impurities, L'Estrange enlisted the help of citizens to bring him information leading to the discovery of illegal press operations. For this information, the citizen received payment of forty shillings and the assurance that his identity would be protected. If one could give proof of a seditious or unlicensed book in press, L'Estrange paid a handsome reward of £5.¹⁸ Illustrative of the treatment an alleged libeler could face is the case of John Twyn and the publication of his Treatise of the Execution of Justice. During a search of his home, officers found proofs of the treatise and pronounced them seditious. Twyn pleaded to the court for mercy, but was declared guilty of treason and subsequently hanged, drawn and quartered, with fragments of his mutilated body put on display on Ludgate, Aldersgate, and other gates in the city of London.¹⁹

The Licensing Act of 1662 expired in 1679 and was later renewed in 1685 under James II and again in 1692 during the reign of William and Mary. Having been accustomed to a free press in Holland, "King William was in no mood to make much use of the tyrannical opportunities offered to him in England."²⁰ It was during William's kingship that the Licensing Act expired once and for all (1695), thus bringing to fruition Milton's plea for the dismantling of censorship apparatus

that silenced works prior to publication. The rejection of the printing act did not stem from a theory of inherent liberties or freedoms or from the emotional tide of the Glorious Revolution (1688) and its accompanying Bill of Rights (1689). Rather, it was quietly allowed to expire by Parliament as a result of the government's inability to monitor the press and implement licensing laws effectively. The Stationers' Company, the enforcement arm of the system, had diminished in its ability to control the press as its many Puritan and Presbyterian members often clashed with the cavalier government. Difficulties in administration from Charles II to William prompted the elimination of licensing laws. In Parliament, "[b]oth parties had already enjoyed periods of ascendancy, and both were aware of the part which the press played in bringing them to power. Each was afraid to trust the other with the administration of the licensing act."²¹

As the seventeenth century came to a close, government licensing of printed materials had been discontinued, the Stationers' Company no longer held monopolistic control over the industry, and the prerogative powers of the crown in relation to the press were not to be seen again.²² A new freedom of the press heralded the new century; a number of new journals emerged and with them came a journalistic vitality not before known. The press, however, did not enjoy complete freedom as stamp taxes, subsidization, and legal prosecution were methods employed by the government to control the press through most of the eighteenth century.²³ Comparatively, printers possessed greater liberty to publish new works and experiment with new writing styles in the eighteenth century--a feature of English society not

transplanted to her colonies in America for many years after 1695.

The early settlers of the Massachusetts Bay Colony brought to the New World the views of press regulation held in England at the time. The legal right of free discussion had not yet been recognized:

That they [the colonists] should stamp out heresy in the church and sedition in the state was a matter of plain necessity, a common-sense regulation for the preservation of public order....Any relaxation of their control would have seemed a surrender of liberty to licentiousness. They kept control of the press as an essential part of their policy to maintain pure religious doctrine and worship, to guard public morality, to preserve a wholesome respect for the authority of magistrates and elders, to defend their charter rights, to give security against the ever dreaded injury from the spread of dangerous ideas.²⁴

The site of the first press in the colonies was Harvard College. College officials closely monitored the press for nearly a quarter of a century after its establishment in 1638. In 1662, the Massachusetts General Court appointed two licensers to inspect all materials printed in the colony--the first formal censorship act in America. In 1664, another act designated Cambridge as Massachusetts' only printing center (to ensure greater control) and reaffirmed the compulsory licensing law. Censorship was regarded as a prerogative of colonial governments, and the crown issued the following instructions to all colonial governors from 1686 to 1730:

And forasmuch as great inconvenience may arise by liberty of printing within on said territory under your government, you are to provide by all necessary orders that no person keep any printing-press for printing, nor that any book, pamphlet or other matter whatsoever be printed without your especial leave and license first obtained.²⁵

Benjamin Harris' Publick Occurrences (Boston) was the first newspaper to appear in the colonies in 1690. It was a short-lived opera-

tion, printing just one issue before being shut down. "As it was not published by authority, the Governor and Council promptly found that the pamphlet, as it was called, contained 'reflections of a very high nature' and ordered its suppression."²⁶ Harris had commented upon the "tactics of a recent military expedition, comments that were unpalatable to Crown officials."²⁷ He was fined £500 and ordered to stand in the pillory and to "give surety for his good behavior for three years."²⁸

Fourteen years elapsed before another newspaper was attempted, again in Boston, by John Campbell, the city's postmaster. Campbell's Boston News-Letter met with great success, publishing for 72 years. William Brooker started the Boston Gazette (1719), a journal upholding the religious and civil authority of the existing regime, and in 1721, James Franklin printed the first issue of his New-England Courant, an "anti-establishment" paper that was to spark great controversy during its five and a half year run.

Franklin was a source of irritation to government and ecclesiastical leaders alike. He condemned Cotton Mather for his program of smallpox inoculation, and in 1722, was jailed for a sarcastic criticism of the government's failure to protect shipping against piracy. In his absence, Franklin's sixteen-year-old brother, Benjamin, continued to print the newspaper. The following year, as a result of further satire and innuendo in the paper, Franklin was forbidden to publish the Courant without prior approval of its contents by government officials, "whereupon he circumvented the order by bringing out the paper in the name of...Benjamin," thus launching an illustrious

printing and political career.²⁹

Elsewhere in the colonies, the struggle for a free press continued as well. In Philadelphia, William Bradford, convicted without trial for printing the tracts of a separatist Quaker faction, appealed to the court for the right to a trial by jury under the tenets of the Magna Carta. After four months in jail, Bradford was granted a trial and "for the first time in an American libel trial, [Bradford] raised the contention that the jury was to try the whole of the matter, the criminality of the publication as well as the defendant's responsibility for it."³⁰ The jury was deadlocked and a new trial was to be set to decide the case. Bradford waited in prison for a year before he was "rescued" by the governor of New York, "who, on the suspension of Penn's charter, had been given control of Pennsylvania" and needed an editor for his official press in New York.³¹ Thus reprieved, Bradford set off for Manhattan and founded the New-York Gazette.

Colonial printing in its early years was rather bland, the aforementioned cases being exceptions, in that it was to the printer's advantage to avoid conflict and gain as wide a readership as possible. As the 1700s progressed, the high journalistic and editorial style displayed by English writers such as Daniel Defoe, Jonathan Swift, Joseph Addison, and Richard Steele similarly enriched the American press. Cato's Letters, political essays promoting theories of liberty and representative government written by John Trenchard and Thomas Gordon, were widely reprinted in papers throughout the colonies in the 1720s, leading toward a more enlightening and exciting press in America. For the most part, though, until the Stamp Act crisis in

1765, colonial printers pledged oaths of neutrality on political issues and took up sides only when they "served those who insisted on and were willing to pay for their partisanship."³²

Perhaps the most celebrated case in American press history is the trial of John Peter Zenger in 1733. This case, though exemplary for its defense, did not lead to the enactment of any revisionist press laws for over 50 years. Its precedent, however, merits close examination. With the death of New York Governor John Montgomerie on July 1, 1731, Rip Van Dam, a merchant of Dutch descent and senior councillor of the colony, was chosen to sit in the governor's chair until the English appointee arrived. It was thirteen months before William Cosby appeared to take his place at the helm of New York's royal government, and in the interim, the colonial government provided Van Dam with the fees and salary of the governor--money that Cosby later claimed was rightfully his.

Opposition to Cosby's unreasonable demands and to his replacement of Chief Justice Lewis Morris with James DeLancey, the young son of one of his friends, organized into a united faction and employed the services of John Peter Zenger, a German immigrant, to publish the Weekly New-York Journal as an organ of anti-Cosby sentiment. Cosby deemed the opinions printed by Zenger scurrilous and seditious, and ordered Zenger's arrest. On November 17, 1732, the German printer was charged with "libel of information"--"a devise then and where not prohibited, now useful in circumventing obstinate grand juries" and securing indictments.³³

Zenger, unable to post £800 bond, was jailed for approximately nine months, during which time Chief Justice DeLancey disbarred the printer's counsel, James Alexander and William Smith, for contempt of court. To Zenger's defense came Andrew Hamilton, one of the most eminent lawyers in the colonies. Journeying from Philadelphia (where he was attorney to the Penn family) the 80-year-old Hamilton sought to prove the truth of Zenger's allegedly libelous words. Truth as a defense was not recognized by law in 1734 and DeLancey refused to admit the truth as evidence. It was at this point that Hamilton turned to the jury and in a heartrending, emotional speech, he appealed to its members to witness, above all else, the truth of the facts:

[T]he question before the court and you, gentlemen of the jury, is not of small or private concern; it is not the cause of a poor printer, nor of New-York alone, which you are now trying: no! it may, in its consequence, affect every freeman that lives under a British government on the main of America. It is the best cause: it is the cause of liberty! and I make no doubt but your upright conduct, this day, will not only entitle you to the love and esteem of your fellow-citizens; but every man who prefers freedom to a life of slavery, will bless and honour you, as men who have baffled the attempt of tyranny, and who, by an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity, and our neighbours, That, to which nature and the laws of our country have given us a right,--the liberty--both of exposing and opposing arbitrary power (in these parts of the world at least) by speaking and writing truth.³⁴

"[S]wayed by the magnificent forensics of a great lawyer," the jury "turned a deaf ear to the law as explained by the prosecutor and the presiding judge"³⁵ and brought in a verdict of "Not Guilty," acquitting Zenger for the criminal offense of printing seditious material under common law. Ironically, it was the Sedition Act of 1798 that officially recognized truth as a valid defense in libel cases. By

establishing the principle that both the fact of publication and its libelous nature were to be ascertained by a jury, Hamilton's defense signalled the taking away of political power from the hands of authority and placing that power into the hands of the colonists.³⁶

The Stamp Act of 1765 was another event that had a significant effect on the course of freedom of the press in America. Prior to the Stamp Act, as was mentioned before, the colonial press had been relatively quiet as far as governmental criticism was concerned, but with the enactment of a tax assessing a half-penny on each newspaper copy and a two shilling charge on each advertisement, printers unleashed their anger and entered into a period of highly opinionated and revolutionary journalism. The tax was designed to bring in revenues to the mother country to cover debts incurred during the French and Indian War (ending in 1763). With the passage of a stamp tax in England as early as 1712, Parliament did not foresee any problems with its implementation in the colonies. The act was economically devastating to some printers whose patrons could not accommodate the payment of high taxes or whose advertisers refused to pay the steep fees. On October 31, the day before the act was to be put into effect, William Bradford fashioned the front page of his Pennsylvania Journal and Weekly Advertiser to resemble a tombstone with the epitaph: "Expiring: In Hopes of a Resurrection to Life again."³⁷ Through tax evasion and bold opposition (printing without a stamp), printers successfully fought the legislation:

The newspapers, both by protesting in a striking manner against the effects of the Stamp Act upon themselves and by

printing arguments against the obnoxious act, played an important role in creating sufficient sentiment among the colonists to lead Parliament to repeal the Act in 1766. This successful outcome of their remonstrances taught the colonists the effectiveness of strong, wide-spread protests and made their leaders realize the value of the press in shaping public opinion.³⁸

Emerging from its cocoon of neutrality, the colonial press became a real societal force, a force not easily controlled by oppressive government measures. The agitation displayed by printers during the Stamp Act crisis caught the attention of the public and "enormously enhanced the press, instilling a newspaper-reading habit which has characterized all succeeding generations."³⁹ Printers now made editorial comments on news events and, in effect, were their own licensors as they decided what information was to be printed and what was to be omitted. "No longer purveyors of intelligence, they had become engines of opinion."⁴⁰

In England, John Wilkes made a name for himself in the battle for press liberty in a trial that spurred a crusade on both sides of the Atlantic. Commenting on a speech made by George III regarding the peace between Great Britain, France, and Spain, Wilkes, a member of Parliament, questioned the king's policies and the character of his ministers (especially Lord Bute) in the North Briton, No. 45 (1763). Wilkes brought to the North Briton "a fire and spirit which marked him as no common hack. He spoke the language of liberty and set his opponent on the defensive at one stroke of the pen."⁴¹

In response to the publication of No. 45, a general warrant was issued to search for the authors and printers of this seditious libel and to arrest them and confiscate their papers once found. The

authorities identified John Wilkes as the author, and in the course of their search through his belongings, government officials came upon an indecent poem entitled, "Essay on Woman." Conveniently, the government added "a charge of publishing an obscene and impious libel, in the hopes of shaking the support of the middle class who were convinced of Wilkes' sincerity and political integrity."⁴² Wilkes was found guilty on both counts and was expelled as an M.P. Before sentencing, he fled to France and hence was sentenced to outlawry for his failure to appear before the court, but "his letters and tracts from Paris won him so sympathetic a response at home that he returned to clear his name."⁴³ The sentence of outlawry was reversed, although Wilkes was ordered to serve a twenty-two month prison term and pay a £1,000 fine for the North Briton and "Essay on Woman" libels.

Englishmen hailed Wilkes as a national hero and a "champion of the rights of the people, and 'Wilkes and Liberty' became the rallying cry of those opposed to the Government."⁴⁴ His fine was raised "twenty times over by public subscription"⁴⁵ and his popular appeal was further demonstrated by his election to the House of Commons while serving time in prison, not once, but three times. The impact of Wilkes' trial was not confined to the defendant's homeland, however. In the colonies, the South Carolina Assembly showed its goodwill toward the English idol by voting £1,500 to be put toward his debts, and in Boston, Wilkes' release from prison was "celebrated by a flag raising at the Liberty Tree...and by drinking to his health."⁴⁶ Like the Zenger case, the Wilkes trial did not lead to any immediate changes in seditious libel law, but his fight did ignite popular

opinion in favoring a more liberated press--a condition not realized in England until the enactment of the Fox Libel Act in 1792.

Six years following the Wilkes trial, the colonies produced its own version of the English crusader for press freedom in the form of Alexander McDougall. In reaction to a 1769 New York Assembly vote providing the king's troops in New York City with needed supplies, McDougall "condemned the Assembly for abandoning the liberties of the people by passing the provisions bill, and called upon the public to rise against unjust measures."⁴⁷ McDougall was arrested for writing a seditious libel, and while awaiting trial, "[h]is imprisonment did more to publicize the cause of liberty of the press than any event since Zenger's trial."⁴⁸ His trial was set for July 2, but James Parker (the owner of the paper in which McDougall's article was published), "the star witness of the prosecution and the only one who could testify from personal knowledge that McDougall had written the seditious broadside, suddenly died."⁴⁹ The trial was postponed for three months and then indefinitely. The Assembly imprisoned McDougall again late in 1770 and was to try him in a second hearing. A debate ensued over the Assembly's own powers regarding the trial, and McDougall was ultimately released at the end of the legislative session and the charges against him dropped.⁵⁰ Signifying the close association of the McDougall case with that of John Wilkes, the patriotic Sons of Liberty took "forty-five"--the number of the famous issue of the North Briton--and created from it "a talismanic symbol of libertarianism and of the American cause against England":

On the forty-fifth day of the year, for example, forty-five Liberty boys dined in honor of McDougall on forty-five pounds of beef from a forty-five-month-old bull, drank forty-five toasts to liberty of the press and its defenders, and after dinner marched to the city jail [in New York] to salute McDougall with forty-five cheers. On one particular festive liberty day, forty-five songs were sung to him by forty-five virgins, every one of whom, reported a damned Tory, was forty-five years old.⁵¹

The growing patriotic sentiment was a cause for fear on the part of royal officials in the colonies. Despite the pleas of these officials to the home government for aid in the control of the free-spirited American press, action was not taken. In 1770, the Privy Council recommended to the king that the press issue be presented to the next session of Parliament, but "[t]he Ministry, so far as is known, did not act upon the recommendation of the Privy Council, either then or later, preferring to leave the problem to the officials on the spot and blithely ignoring the circumstances which rendered the local efforts hopeless."⁵² America's geographical vastness and its lack of one major trade center and common legal system also contributed to the difficulty of controlling the colonial press.⁵³ Even if action had been taken, it is possible that attempts to inhibit anti-British writings would have led to "greater publicity and thus backfired against the government."⁵⁴ The policy of inaction traced back to the mother country's reluctance to punish law-breaking printers under the Stamp Act, and by 1770, the British officials found themselves in a no-win situation regarding the implementation of uniform press regulation.

As Revolution approached and anti-British sentiment grew, the exercise of a free press was, for the most part, an actuality. Under

the radical lead of the Sons of Liberty, the patriot press printed inflammatory tracts, but freedom of the press took on a new form as Whig editors "simply contended that liberty of speech belonged solely to those who spoke the speech of liberty."⁵⁵ As Leonard Levy expressed in his assessment of American printing at the eve of the Revolutionary War:

The irony of the period might be best portrayed by a cartoon depicting the tarring and feathering of a Tory speaker or printer under a banner run up by the patriots inscribed, 'In Liberty's Cause.' Yankee Doodle's Liberty Boys vociferously claimed for themselves the right to freedom of expression which they denied their opponents, revealing an extraordinarily narrow understanding of the liberty of the press.⁵⁶

With the lines drawn between Tory and patriot editors, strict political neutrality became a virtual impossibility. Outnumbered two to one, "[m]ost Tory printers waited as long as they dared before abandoning fully the trade principle of neutrality."⁵⁷ Only in New York were there enough Loyalists to support a Tory press. These presses, though, were not free from the violence of revolutionary groups.

One victim of anti-Tory wrath was James Rivington, an avowed Loyalist and publisher of the New-York Gazeteer. Seeking revenge for some insults directed against him in the Gazeteer, Isaac Sears descended on New York from New Haven, Connecticut in November 1774, accompanied by 75 Connecticut Light Horse and a number of Sons of Liberty he picked up along the way. He and his followers proceeded to destroy Rivington's press and to take away his type.⁵⁸

An uninhibited press operated during the war against England, that is if the printer was sympathetic to the American cause. After

the war, attempts to control the press were vehemently opposed as the Massachusetts Stamp Act of 1785 demonstrated. In order to raise revenue for the state, a 2/3 cent tax was imposed on every newspaper. "Whereas there was no evidence that the State Legislature desired in any way to abridge the liberties of the press, the newspapers promptly took that point of view and filled their columns with tirades against this obnoxious act."⁵⁹ An August 15, 1785 article in the Boston Gazette denounced the act as a contrived attack on the freedom of the press--"that palladium of all the rights, privileges, and immunities, dear or sacred to any body of men worthy to rank above the brute creation!"⁶⁰ In 1788, the Massachusetts Legislature repealed this "infringement" on liberty, stating that the small return brought in from the tax inspired its revocation. In triumphant jubilation, the Massachusetts Spy printed these words of hope and prophecy:

Heaven grant that the FREEDOM OF THE PRESS, on which depends the FREEDOM OF THE PEOPLE, may, in the United States, ever be guarded with a watchful eye, and defended from shackles of every form and shape, until the trump of the celestial messenger shall announce the final dissolution of all things.⁶¹

In 1787, when the leaders of the newly formed United States gathered in Philadelphia to construct a federal government for the nation, freedom of the press was discussed, but not provided for in the resulting Constitution. Why was a fundamental issue such as press liberty omitted from this document? In his study on the freedom of the press, Samuel A. Dawson offers this answer:

By some, freedom of the press was regarded as an accepted and incontrovertible right, and by others it was subordinated to another conflict--that between expressed and delegated powers. All opposition to

proposals ensuring freedom of the press was grounded on the belief that specific provisions were not required.⁶²

One notable figure expressing the view that a constitutional provision was unnecessary was Alexander Hamilton. In The Federalist, No. 84, Hamilton put forth this argument:

What is the liberty of the press? Who could give it any definition which would not leave the utmost latitude for evasion? I hold it impracticable; and from this, I infer that its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government. And here, after all, as intimated upon another occasion, must we seek for the only solid basis of all our rights.⁶³

Hamilton's view prevailed at the Federal Convention, for although Charles Pinckney of South Carolina "sought to place a free-press clause in the nation's organic law, a slight majority [Ayes, 4; Noes, 7] rejected the proposal on the ground that in view of the division of authority between the state and central governments, Congress would have no control over newspapers."⁶⁴

The Constitution was sent to the states for ratification without a free press clause. A number of states, however, found the omission of press liberty alarming and Virginia, New York, and Rhode Island "embodied a declaration of this right in their ratification of the Federal Constitution, and Virginia expressly demanded an amendment also."⁶⁵ As a result of the clamor for some mention of this and other civil liberties, the Bill of Rights was appended to the Constitution, freedom of the press being guaranteed under the first of its ten amendments:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or

abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.⁶⁶ [Italics mine]

Similar provisions for freedom of the press were included in state constitutions. The adoption of the Bill of Rights in 1791 reflected a growing liberal spirit in America, but it also marked "an age of suspicion toward government."⁶⁷ "These amendments sprang from a distrust of a centralized government possessing far-reaching powers remote from the people themselves"⁶⁸-- a distrust that had been nurtured throughout the colonial experience. The Bill of Rights, then, was a safeguard against attacks on personal liberty and the exercise of governmental tyranny.

The Bill of Rights, however, did not indicate whether press freedom was to be guided by Zengerian principles or those of the common law; this issue was left to the states and individual interpretation. The classic eighteenth-century interpretation of the English common law is found in Commentaries on the Laws of England by Sir William Blackstone. The Blackstonian theory maintained that "liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published...the press cannot be abused to any bad purpose without incurring a suitable punishment; whereas it never can be used to any good one when under the control of an inspector. So true it will be found that to censure the licentiousness is to maintain the liberty of the press."⁶⁹ Inspection of printed materials and the enforcement of rigid libel laws characterized this theory that prevailed in the

United States until the enactment of the Alien and Sedition Laws in 1798 when the Federalists imposed upon the country a new interpretation of press liberty and the libertarianism that had been evolving throughout the 1790s finally asserted itself.

England loosened its restrictive ties on the press in 1792 when Parliament passed the Fox Libel Act. The act "gave the jury the authority in criminal libel cases to try the issue upon the whole matter shown in the information against or the indictment of the defendant,"⁷⁰ a belated adoption of the points emphasized by Andrew Hamilton in the Zenger case. In 1798, the United States, too, empowered juries to determine the law and the facts of a libel case with the passage of the Alien and Sedition Acts. The libertarian call for a less restrictive press was answered by a number of the tenets of the Sedition Law, which provided that the criminal intent of a libel must be proven and truth could be presented as a defense. The law was very limiting in other respects, though, initiating the development of a new libertarian theory.

Stemming from political conflict and distrust between the Federalists and Republicans, the Federalists (being the party in power), "under the guise of patriotic purpose and internal security...enacted a program designed to cripple, if not destroy the Jeffersonian party. In the face of the emergence of an effective grass-roots democratic opposition to their domestic and foreign policies, they retreated to repression as a means of retaining political power."⁷¹ The Alien Law affected journalism in that a number of Republican editors were not native Americans and as such could be deported or imprisoned if they

were deemed potential threats to the integrity and security of the government. The most appalling aspect of the legislation, however, was the Sedition Law's unrestrained prosecution of those writing anything derogatory about the government or its leaders. As a justification for the act, the Federalists asserted that the Constitution gave Congress the power to pass a law of this kind on the basis of Blackstonian common law--making printers responsible for their published materials. The Sedition Act followed this philosophy, but the Federalists pursued violators with a prejudiced vengeance and were supported in their actions by a Federalist-dominated court system assuring convictions. Under the act, there were twenty-five arrests, fifteen indictments, eleven trials, and ten convictions.⁷²

The Federalist view of the press was a reflection of the party's political ideology. Looking to English common law and the notion that government has supremacy over the people, the "sedition law was consistent with the Federalist concept of an elite ruling class."⁷³ Those in power were to be revered and respected, not denigrated by a critical press: "It was a greater offense to criticize one of the rulers than it was to criticize one of the people themselves, because the rulers partook of the majesty of the whole people."⁷⁴

Conversely, many Republicans held that government existed for the people and disavowed the idea that government could be seditiously libeled. Freedom of the press, said the Republicans, was "one of the natural rights of man as derived from the law of God and incapable of infringement by any manmade power."⁷⁵ Fearing tyranny and promoting

liberty, the Republicans believed that an uninhibited press would not hinder good government but promote it, making certain that elected officials serve the needs of their constituents, not their own selfish desires.

Two of the most prominent leaders of the Republican party, James Madison and Thomas Jefferson, penned documents that embodied the anti-Federalist position on the Sedition Act. Madison, in the Virginia Resolution of 1798, denied the constitutionality of the act and defended the Bill of Rights' press clause. In this passage, Madison's fear of the law is most evident: "[T]he 'sedition-act' which legislates on the freedom of the press...establish[es] a precedent that may be fatal to the liberty of conscience; and it will be the duty of all, in proportion as they value the security of the latter, to take the alarm at every encroachment on the former."⁷⁶ Similarly, Jefferson believed the Sedition Act to be unconstitutional, but his Kentucky Resolutions of 1798 were "no passionate defense of freedom of the press and of political opinion. Indeed, he did not even take the position that the Sedition Act was void and dangerous because a free, republican government could not and should not punish the press for crimes of opinion [as evidenced by the *Croswell* case of 1803]. His position, rather, was that the power to punish crimes reached by the act was exclusively reserved to the states."⁷⁷ Jefferson, then, did not possess the strong libertarian views of many of his fellow Republicans.

Freedom of the press was equated with freedom of political expression by the new libertarians. This idea was epitomized by

George Hay, a liberty-loving Virginian who "insisted that freedom of the press, like chastity, was either 'absolute' or did not exist."⁷⁸ The libertarian fervor took hold of the nation as the common man became outraged at the abuses inflicted on the press by Sedition Act prosecutions. In Freedom's Fetters, a comprehensive study of the Alien and Sedition Acts, James Morton Smith summarizes the effects of the controversial Federalist legislation:

The Alien and Sedition Laws played a prominent role in shaping the American tradition of civil liberties. Based on the concept that the government was master, these laws provoked a public response which clearly demonstrated that the people occupied that position....Indeed, the law furnished a ready text which the Democratic-Republicans used to incite the American people to legal 'insurgency' at the polls; the election resulted in the repudiation of the party which tried to protect itself behind the Sedition Law. It elevated to power a party whose leaders stressed the concept that freedom of opinion is an essential part of an all-encompassing freedom of the mind.⁷⁹

Public opinion and the press were released from their bondage with the election of Jefferson to the presidency in 1800. Jefferson proceeded to pardon those convicted under the Sedition Act, and the House Judiciary Committee declared the act unconstitutional. Fines imposed under it were restored, with interest.⁸⁰ The press enjoyed greater freedom under Jefferson than it had during the administration of John Adams, but seditious libel laws continued to be enforced on the state level as was shown by the New York State indictment of Harry Crosswell in 1803.

Crosswell, the Federalist editor of The Wasp, was found guilty of seditious libel for printing a story relating that President Jefferson had "paid to have [George] Washington denounced as a traitor and

[John] Adams as an incendiary." The recipient of the money was identified as James Callender (a man who later was to cause much aggravation for Jefferson).⁸¹ Croswell offered to provide evidence that would prove the truth of the printed statements, but Chief Justice Morgan Lewis maintained that the truth was not a valid defense and that the jury was to decide only if Croswell published the article, nothing more.

The jury found Croswell guilty, but he appealed and Alexander Hamilton volunteered to represent the Federalist editor in a preliminary hearing for a second trial. Hamilton resurrected the arguments used years before in the Zenger case. In his impassioned closing remarks, Hamilton presented the court with his own definition of press freedom:

[L]iberty of the press consists in the right to publish, with impunity, truth, with good motives, and for justifiable end, whether it represents government, magistracy, or individual.⁸²

Croswell lost his case, when in this "hearing on the motion for a new trial, the court was evenly divided, thus allowing the verdict of the original to stand," yet the State made no effort to sentence him after the untimely death of Hamilton.⁸³ "The effect of the case was so repugnant to the popular opinion of the state that the New York legislature in 1805 passed an act"⁸⁴ incorporating those points expounded by Alexander Hamilton in the trial. The extension of power to the jury to decide "the whole matter" and the admission of truth as a defense were similarly adopted by numerous state governments, thus setting a standard that has endured to present day. It was not until

1843 that England secured comparable legislation with the passage of Lord Campbell's Act.

The thirty years following Jefferson's election in 1800 inaugurated "a period when some of the worst gutter language to which the American newspaper and pamphlet have resorted was taken as a matter of course. There was vast freedom to accuse, charge, question motives, and comment as one wished, subject largely to civil libel suits and an occasional criminal libel action."⁸⁵ The most visible victim of press abuse was Jefferson and his major tormentor was James Callender. Angry because he had not been appointed postmaster at Richmond by the President, Callender set loose a barrage of accusations against Jefferson, amongst them charges of atheism and adultery.

Jefferson's reaction to such attacks was one of frustration and dismay. He restrained from taking overt retaliatory action, although he did condone state prosecutions for seditious libel. "Jefferson's tolerance of the abuse heaped upon him by the opposition--and it was as vile as anything in the history of American journalism--played a very important role in the development of an uncensored press in the United States."⁸⁶ This trend continued through the trying years up to the war against Britain in 1812. The Republicans, led by James Madison, fought the war without the use of "coercive devices" against the press.⁸⁷ Some Republicans, however, took the law into their own hands on the local level, terrorizing anti-war Federalist editors, damaging presses, and inflicting personal injury.⁸⁸

As a party, the Republicans emerged from the War of 1812 victorious and the undisputed choice of the people. With the economic pros-

perity that followed the conflict, "faith in public opinion grew ever stronger" and the Republicans' ability "to survive the war without repressing a treacherous opposition had prepared the ground for that faith. It had apparently confirmed in practice what had hitherto been ideological theory, that the state was not endangered by mere words, and therefore was seldom, if ever, justified in curbing the expression of opinion."⁸⁹

The next prominent threat to press freedom in the United States came on the wings of the growing abolitionist movement in the 1830s. As the number of abolitionist publications increased, so too did resistance to these potentially incendiary materials. In 1835 a mob in Charleston, South Carolina destroyed a large shipment of abolitionist mail and the city's postmaster wrote to Postmaster General Amos Kendall informing him that abolitionist mail would not be delivered in Charleston unless he was ordered to do so. "Kendall knew that no law empowered him to authorize the withholding of mail, but his sympathies were Southern; he wrote [the postmaster] that he could neither sanction nor condemn [his] act."⁹⁰ Kendall favored a law that would allow for the restriction of delivery of these publications in the South, as did President Andrew Jackson and John C. Calhoun, but Congress "chose instead to accept Daniel Webster's and Henry Clay's view that this would invade freedom of the press, and passed a law that ran counter to Kendall's wish."⁹¹

Despite Congress' law, "Southern laws were passed contradicting the federal statute, Southern postmasters cooperated fully, and effective suppression was the result."⁹² The "Southern taboo" against

anti-slavery opinion checked the abolitionist tracts and newspapers, and the suppression of most of these materials was effected in a peaceable manner. Abolitionist papers tested the tolerance of people in both the North and the South. The office of the Utica Standard and Democrat was vandalized in 1835; the Pennsylvania Freeman (Philadelphia) operation was the victim of arson in 1838; in Cincinnati, mobs sacked James G. Birney's Philanthropist on three different occasions in the latter 1830s; and in 1845, the press of Cassius N. Clay was dismantled and removed from its "home" in Lexington, Kentucky. The most renowned incident of mob violence against an anti-slavery press occurred in 1837 at Alton, Illinois where the Observer press was repeatedly sabotaged and on the fourth occasion, its editor, the Reverend Elijah P. Lovejoy, was shot, killed, and elevated into the martyrdom of the abolitionist cause.

Except for the menace posed by abolitionist newspapers, press history followed a relatively even course throughout the first half of the nineteenth century. Printers were granted greater freedom than they had ever known before, and they were supported by liberal publishing and libel laws--laws that reflected a rich heritage of struggle for the emancipation of the press from licensing, taxation, and governmental tyranny.

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CHAPTER II
THE NORTHERN PRESS AND THE SUPPRESSIONS OF THE
CHICAGO TIMES AND NEW YORK WORLD

By 1860, the American newspaper had come of age. Technical innovations in printing and paper-making led to cheaper newspaper prices; advances in public education increased the number of literate Americans; and the growth of popular democracy fostered a politically aware and information hungry citizenry. The combination of these developments resulted in a great demand for news and a flourishing newspaper industry throughout the United States. On the crest of this high tide of mid-nineteenth century journalistic activity came the Civil War--a conflict that had both positive and negative effects on the newspaper trade.¹

Major metropolitan dailies in the North allotted unprecedented amounts of money to their "war departments," and field correspondents or "specials" reporting from all fronts became the mainstays of these competitive papers. The New York Herald was especially committed to war coverage, boasting the largest correspondent staff and war department budget (\$500,000 per year) of any paper in the country. Many of the newspapers that could not afford sending reporters into the field subscribed to press associations (New York Associated Press and Press

Association of the Confederacy), which employed large corps of field correspondents and supplied the journals with war news. The war offered great opportunities for the special reporter, as the government issued him free passes allowing for the use of government horses, wagons, steamers, and army trains. Passes also gave correspondents close proximity to military leaders whose plans were often overheard and published.²

While the war department was an integral part of a newspaper, the editorial department had even greater significance, for it set the political tone of a paper. "[T]he personality of the editor-proprietor was as essential as the very name of the paper," making for a very personal and partisan press.³ The Union government had great difficulty controlling the printed word due in most part to the fragmentation of northern opinion relating to the war and Abraham Lincoln's policies. Although Confederate leaders had their problems with the press, overall, Southerners displayed a more unified spirit and cooperative attitude.⁴

A problem plaguing both Union and Confederate leaders was the frequent publication of troop movements, battle strategies, and other confidential information not intended for general dissemination. Because the press revealed so many plans, each side faithfully reviewed the newspapers of the other in hopes of finding helpful material. Understandably, military officers were annoyed and angered by the leakage of secret information. In April 1861, the Lincoln administration gave the State Department control of the telegraph wires. Censors screened telegraph messages and transmitted only those dis-

patches containing non-secret information. State Department efforts were undermined, however, as reporters re-routed communications held up in Washington through other offices, or used the mails, which were open to reporters and free from close scrutiny.⁵

On August 5, 1861, General George B. McClellan called together the war correspondents in the military district of Virginia in an attempt to stop premature reporting of military movements. The resulting "gentlemen's agreement" outlined provisions whereby the government would cooperate with the press in obtaining and transmitting items suitable for publication. With the competition among correspondents to be "first with the news," though, a number of Union generals found it necessary to enact their own press restrictions.⁶ Another government tactic to silence over-eager newsmen began August 7, 1861, when the War Department issued an order drawing attention to the 57th Article of War and its restrictions on the press. The order reminded reporters of the article (first issued April 10, 1806), which stated that "holding correspondence with or giving intelligence to the enemy, either directly or indirectly, is made punishable by death or such other punishment as shall be ordered by the sentence of a court-martial."⁷ With this in mind, the War Department prohibited the publication of any correspondence or communication received "verbally or by writing, printing, or telegraphing, respecting operations of the army or military movements on land or water, or respecting the troops, camps, arsenals, intrenchments [sic] or military affairs...without the authority and sanction of the general in command."⁸

The War Department, headed by Edwin Stanton, next became involved

in telegraph censorship. On February 26, 1862, the department took possession of all telegraph lines in the United States. The directive issued by order of the president reiterated some of the points included in the 57th Article of War, making clear that military information was not to be printed without the authorization of the War Department, the commanding general, or the general commanding in the field. Violators were to be "excluded thereafter from receiving information by telegraph or from transmitting their papers by railroad."⁹ Under this order, "correspondents became, in effect, press agents for generals with whom they were associated."¹⁰

Despite the many orders and threats, the Lincoln administration's efforts to control the press were sporadic and ineffective. The censorship of telegraph lines shifted from department to department, belying any kind of uniformity, and generals in the various military districts conducted their own press policy. Some generals "courted" reporters, hoping for favorable publicity; others, frustrated by unauthorized disclosures in newspapers, took harsh action against violating reporters.¹¹ General William T. Sherman arrested a New York Herald reporter as a spy after he filed an article without first submitting it for approval. Were it not for President Lincoln's intervention, the reporter would have been executed by Sherman's order.¹²

Other examples of press leaks are abundant, not only in the early stages of the Civil War, but throughout the entire conflict. General-in-Chief Henry W. Halleck showed his displeasure with Major-General John Pope's command in this message of August 20, 1862: "I think your staff is decidedly leaky. The substance of my telegrams to you have

been intercepted. Clean out all such characters from your headquarters. It is useless to attempt sending of[f] orders if you permit them to be made public as soon as you receive them."¹³ It was not only the correspondents who were at fault, then, but many high-ranking officers who revealed confidential information either directly to reporters or indirectly by way of telegraph messages to family and friends.¹⁴

The maintenance of secrecy within Union lines was not easy due to careless officers, zealous reporters, a disorganized administration, and a journalistic freedom that had matured in America during the nineteenth century. As Harold L. Nelson summarized the situation in Freedom of the Press from Hamilton to the Warren Court: "The thought behind the North's plans for a field censorship that would protect the security of strategy and armies was primitive, and the system worked badly through most of the war. The press, now reaching a far greater percentage of the population than in previous wars, was riding high on a system of aggressive news-gathering developed with pride during the previous twenty-five years."¹⁵

Although no systematic press policy was established in the North, over three hundred newspapers met with governmental and military interference.¹⁶ Such interference came in the form of seizures of single editions, checks on newspaper distribution, and most drastic of all, complete paper suppressions. Among those journals suspended by the Lincoln administration for expressing disloyal sentiment were the Chicago Times, New York World, New York Journal of Commerce, Dayton Empire, New Orleans Crescent, Baltimore Gazette, Baltimore Bulletin,

Philadelphia Evening Journal, and the Louisville Courier. This list represents a small fraction of the newspapers that openly criticized the Union government and its leaders and were not shut down. Governmental action resulted from the interaction of many variables: the nature and extent of the criticism printed by a journal, the state of federal troops and citizen morale, and the personalities of administration officials and military leaders dealing with "disloyal" newspapers. The effect of these factors on the press will become apparent in the close examination of two suppressed northern newspapers--the Chicago Times and the New York World.

Founded in 1854 by Isaac Cook, James Sheahan, and Daniel Cameron, the Chicago Times supported Stephen A. Douglas after the Chicago Democrat cut its ties with the spokesman of popular sovereignty in that year. Six years later, Cyrus H. McCormick, inventor of the reaper and owner of the Chicago Herald, bought the Times and consolidated the two papers under the editorship of E. W. McComas. Still a proponent of Douglas, the newspaper foundered until June 1861 when Wilbur D. Storey (also a Douglas Democrat) left the Detroit Free Press to purchase and edit the struggling Times. During his eight years as editor and owner of the Free Press, Storey had revitalized the Detroit journal, and he hoped to repeat his success in Chicago. Known for his diligence, energy, and management skills, the Vermont-born Storey did, indeed, inject vigor into the moderately Democratic Chicago paper, making true his aim for the Times: "It is a newspaper's duty to print the news and raise hell."¹⁷

The resuscitated Times was the leading anti-Lincoln journal in the Midwest throughout much of the war, although in 1861 when secession and war were imminent, Wilbur Storey gave the new administration his full support. Storey believed it imperative that every citizen rally behind the president and country: "[O]ur duty to our government, to American institutions, is above all jealousies and party advantages."¹⁸ With Lincoln's Emancipation Proclamation, however, Storey's backing of the administration quickly ceased. As the editor's biographer, Justin E. Walsh, explained, "[Storey] would sustain Lincoln out of a sense of patriotic duty unless, and as events were to prove, it was a very important unless, the President exceeded

his power."¹⁹ Storey viewed the proclamation as an abomination to the true purpose of the war--the preservation of the Union and the Constitution. He also despised "fanatical" abolitionists who he believed were behind the issuance of the Emancipation Proclamation.

Storey held strong convictions about the supremacy of the Anglo-Saxon race, but the Chicago editor was not an advocate of slavery. In fact, he viewed slavery as neither good nor bad, but as an institution "doomed to ultimate extinction." Until its natural death, slavery should remain free of federal interference, said Storey. While the editor's interpretation of the Constitution condemned the southern doctrine of secession, it upheld state sovereignty with regard to slavery.²⁰

Lincoln's proclamation unleashed the severe invective for which the Chicago Times became renowned. This, combined with dislike for other administration policies, prompted characterizations of Lincoln as an untrustworthy tyrant, despot, and dictator. In a January 3, 1863 editorial addressing the administration's institution of loyalty oaths for federal officers, the Times stated:

It is amazing that the doctrines taught by the first Charles of England should now be revived....The despotism claimed for the President is more absolute than the assertion of kingly power by Charles I at the commencement of his reign.... [This administration has] made the blood of the covenant (the Constitution) an unholy thing, and [has] brought disgrace, defeat, and death to the nation.²¹

Storey was also disillusioned with Lincoln's war policies and the Union's inability to overcome Confederate forces:

However many men may be conscripted to replenish the wasted ranks of our armies, they will be sacrificed uselessly if the imbecilic management that has distinguished the conduct

of the war hitherto continues.²²

Though loyal Union supporters in Chicago were repulsed at Storey's virulent attacks on the government, they could not prove the editor a traitor to the United States. He did not support secret societies, such as the Order of American Knights, that worked to undermine the Lincoln administration through intimidation and violence. Nevertheless, Storey's editorials provoked numerous threats. In case of an attack, muskets and hand grenades were stored in the Times' editorial room, and a system was installed whereby scalding steam from the boiler filled rooms on the lower floor to deter aggressors.²³

In addition to writing scathing commentary and holding strong political beliefs, Wilbur Storey had a reputation for being a demanding and thorough editor. His treatment of the Times' editorial staff was stern and unyielding. He reviewed all that went into each issue of the paper as reporters submitted their work to him. "What he did not like he threw into the waste basket with some biting comment; what he liked, he published without a word of commendation."²⁴ The Times' coverage of the war in the West (especially in Missouri) was unrivalled, due in great part to Storey's emphasis on telegraphic news. So determined was he to get news first that he allegedly said, "Telegraph fully all the news, and when there is no news, send rumors."²⁵

The suppression of the Chicago Times in June 1863 was not an isolated incident of governmental oppression, but a continuation of General Ambrose E. Burnside's controversial and restrictive policy in

the Department of the Ohio. Assigned as commander of the department following his humiliating defeat at Fredericksburg in December 1862, Burnside went to Cincinnati determined to redeem himself in the eyes of the country and of the president. His rash and independent actions in Ohio did little to enhance his popularity, though.

On April 13, in General Orders, No. 38, Burnside announced the following policy: "Persons found within our lines who commit acts for the benefit of the enemies of our country will be tried as spies or traitors, and, if convicted, will suffer death."²⁶ In addition, Burnside warned, "[T]he habit of declaring sympathy for the enemy will not be allowed in this department. Persons committing such offences will be at once arrested, with a view to being tried as above stated, or sent beyond our lines into the lines of their friends."²⁷ In open defiance of General Orders, No. 38, Clement C. Vallandigham addressed a meeting at Mount Vernon, Ohio on May 5, defending his right to speak on any topic. Vallandigham was a proponent of states rights and an outspoken critic of the president. With industry gaining ascendancy over agriculture in the northern states, he and other Midwesterners saw the war as threatening the interests of their region. Vallandigham was also wary of the strong Puritan influence in the religion, morals, and politics of the Union, and of the extension of rights to black men, which he felt would further upset the political balance of power in the Midwest.²⁸ The Peace Democrat pronounced Burnside's directive a "base usurpation of arbitrary power" and legitimated his freedom to speak and criticize on the highest order--"General Orders, No. 1"--the Constitution of the United States.²⁹ Burnside would not

stand for Vallandigham's insubordination and had him arrested in his Dayton home during the night of May 5.

Once arrested, Vallandigham was brought before a hand-picked military tribunal, which found him guilty of violating General Orders, No. 38 and sent him to Fort Warren for confinement. By superseding civil authority with a military commission, Burnside engendered more hostility.³⁰ In a May 30 letter to the president, Republican Governor of Indiana, Oliver P. Morton, expressed his dismay at Burnside's order, reporting that the act was "greatly intensifying the hatred of the majors of the Democratic party, toward the Government, and is rapidly converting what in many cases was mere clamor and general opposition to the Administration into bitter hostility to the Government and the War."³¹ Morton found the order illegal in its circumvention of civil law and suggested that if arrests of disloyal persons were necessary, "they should be made by the highest authority or deliberation, and not left to be determined on and made by the temporary Commanders of Departments, who are here today and gone tomorrow, some of whom are very poor politicians and poorly qualified to judge the political consequences of their actions."³² The governor concluded that it was preferable for state authorities (who understood existing political conditions) to be vested with the power of keeping the peace in their state, aided by the federal government only when events proved it essential.

Burnside did not consult Lincoln or the War Department before issuing the order or before arresting Vallandigham. The president received no official report from the general; he relied on newspaper

Welles's accounts for details of the arrest and trial.³³ As Gideon Welles's diary entry of May 19 indicates ("all regretted the arrest"), the president and his Cabinet were not pleased with Burnside's activities in Ohio.³⁴ The general learned of this opposition and offered his resignation in a telegram to Lincoln:

You know my views upon the subject of command and you must not allow me to stand in the way of the carrying out of any general policy which you may choose to adopt, and I should be glad to be relieved if the interest of the public service requires it.³⁵

The president responded with a short message acknowledging the Cabinet's displeasure with the Vollandigham affair, "but being done[,] all are for seeing you through with it."³⁶ Lincoln's hesitant support for Burnside came at a time when a gloomy defeatism had settled on much of the North. By May 1863, the peace movement was gaining strength and the value of "greenbacks"--paper currency issued by the government but not backed by the gold reserve--was declining after the Union loss at Chancellorsville. In the face of such low public morale, Lincoln believed it necessary to maintain the credibility of his military officers in the field. Thus, he upheld the authority of Burnside.³⁷

Accompanying the anti-war feeling came virulent attacks on the administration by Democratic editors. The Chicago Times, outraged at Burnside's "despotism" in Ohio, did its best to discredit the "Butcher of Fredericksburg" as well as the Lincoln administration. Although Vollandigham's views were "not in perfect accord" with those of the Chicago Times, Storey asserted, "if he has spoken a disloyal word or done a disloyal act, let it be pointed out. His is a loyalty to the Constitution, not to an administration who he believes to be them-

selves disloyal to the Constitution."³⁸ The Times further commented, "How entirely indefensible must be the measures of a government which cannot stand the test of unrestricted discussion before an intelligent and patriotic people."³⁹

Worried about troop and citizen morale, Burnside set out to silence Democratic papers expressing anti-administration opinion. His General Orders, No. 84 issued on June 1, 1863, prohibited the circulation of the New York World in the Department of the Ohio and halted the presses of the Chicago Times on "account of its repeated expression of disloyal and incendiary statements."⁴⁰ Wilbur Storey appealed to civil authority and received a restraining order from U.S. Circuit Court Judge Thomas Drummond. Drummond called for a postponement of military action until application for a permanent injunction could be brought to court. In his decision, the judge expressed his desire to cooperate with the government, but in this instance, he could not defend Burnside's action:

I have always wished to treat the Government as a Government of law and a Government of the Constitution, and not as a Government of mere physical force. I personally have contended and shall always contend, for the right of free discussion, and the right of commenting under the law, and under the Constitution, upon the acts of officers of the Government.⁴¹

Despite Drummond's order, a company from Camp Douglas surrounded the Times building on June 3, and took over its offices at 5:00 a.m. Led by Captain James S. Putnam, the troops shut down the Times' presses and confiscated the 8,000 papers that had already been printed.⁴² On the street, great crowds gathered, numbering 20,000 by nightfall, and cried for free speech and a free press.⁴³ "There was a real danger

that Chicago might undergo a 'civil war' within the Civil War, particularly if a Copperhead demagogue should inflame the passions of the mob with an incendiary harangue."⁴⁴ To avoid such an occurrence, a bipartisan group of the city's leaders spoke to the huge throng of people at Court House Square, assuring them that all efforts would be made to dispel the "spectre of military despotism"⁴⁵ from the city of Chicago.

Among the prominent men present at the mass meeting were Republican Senator Lyman Trumbull and Republican Congressman Isaac N. Arnold. They and other state and city officials composed the following petition for Lincoln's consideration:

Whereas, in the opinion of this meeting of citizens, of all parties, of the peace of this city and State, if not the general welfare of the country, are likely to be promoted by the suspension or rescinding of the recent order of General Burnside for the suppression of the Chicago Times: Therefore,

RESOLVED, That upon the ground of expediency alone, such of our citizens as concur in this opinion, without regard to party, are hereby recommended to unite in a petition to the President, respectfully asking the suspension or rescinding said order.⁴⁶

Trumbull and Arnold sent the petition along with an additional telegram urging the "serious and prompt" action of the president.⁴⁷

Again, Burnside had acted independently in his suppression of the Times, and, again, the president and Cabinet regretted the general's action. Gideon Welles summarized the incident and the administration's reaction to it in a June 3 diary entry:

The arrest of Vallandigham and the order to suppress the circulation of the Chicago Times...have created much feeling. It should not be otherwise. The proceedings were arbitrary and injudicious. [Italics mine.] It gives bad men the right of questions, an advantage of which they avail

themselves. Good men, who wish to support the Administration, find it difficult to defend these acts. They are Burnside's, unprompted, I think, by any member of the Administration, and yet the responsibility is here unless they are disavowed and Burnside called into account, which cannot be done. The President--and I think every member of the Cabinet--regrets what has been done.⁴⁸

President Lincoln responded quickly to the protests in Chicago and on June 4 wrote to Stanton: "I have received additional dispatches which, with former ones, induce me to believe we should revoke or suspend the order suspending the Chicago Times, and if you concur in opinion, please have it done."⁴⁹ The secretary of war followed the president's lead and notified Burnside of the revocation. Burnside, in turn, issued General Orders, No. 91, which allowed for the circulation of both the New York World and the Chicago Times to resume in his district.⁵⁰ The damage had been done, though, for Burnside's arbitrary actions "watered the roots of midwestern Copperheadism" and were not soon forgotten.⁵¹

On June 5, in its first issue following the suppression, the Times proclaimed victory for both the newspaper and freedom fighters in Chicago:

Wednesday (June 3) was a day for Chicago to be proud of. By the voice of her citizens she proclaimed to the world that the right of free speech has not yet passed away; that immunity of thought and discussion are yet among the inalienable privileges of men born to freedom....Twenty thousand bold men with one acclaim decreed that speech and press shall be untrammelled and that despotism shall not usurp the born rights of the American citizen.⁵²

The journal expressed thanks to the many who gathered and spoke out on its behalf. The "public duty of every citizen to maintain the supremacy of the law" had been fulfilled, and the city's devotion to democ-

racy had been demonstrated, said the Times.⁵³

Realizing that Burnside had acted without the consent of the Lincoln administration, Storey did not blame the president directly for the suppression. Rather, he pointed to Lincoln's revocation as evidence of the baseness of the general's action. Lincoln was, however, chastised for "sitting by and permitting military commanders of departments to suppress the circulation of democratic newspapers."⁵⁴

As the weeks passed, the Times' anti-Lincoln invective grew more passionate. In a June 23 editorial, Storey prophesied the destruction of the Union should the president's impudent policies continue: "If the North shall be hopelessly divided,--if the popular unity shall be wholly destroyed--Abraham Lincoln will have upon his own shoulders the awful responsibility of the calamity."⁵⁵

Although Storey attacked Lincoln relentlessly after the suppression, the editor remained calm throughout the crisis. With the suppression came national attention and notoriety, which translated in significant increases in the journal's circulation and advertising patronage. A number of readers sent congratulatory letters to the Times' offices, applauding the paper's courage and fortitude during the suspension. One grateful subscriber wrote:

Your bold and manly course in asserting your rights in the face of Federal bayonets, and your appeal to the proper tribunal for a redress of wrongs inflicted upon yourself and your thousands of readers have excited the admiration of and praise of every sane man whose heart is in the right place.⁵⁶

Joseph Medill's Chicago Tribune, reflecting a pro-Union, pro-

emancipation orientation, was the Republican counterpart to the Democratic Times. There was a fierce rivalry between the two papers as each condemned the other with great fervor. Ironically, before the Emancipation Proclamation, the Tribune criticized Lincoln while the Times supported the administration's conduct of the war. The tables had turned by June 1863, and the Tribune had much to say about the Times suppression and the subsequent presidential action. Medill believed that Burnside was justified in issuing General Orders, No. 84 and praised his conduct in a June 9 editorial:

[H]e formed the resolution to strike the evil at its source, to silence with one blow the treasonable utterances and to stifle the disloyal sympathies that were the cause of all these discouragements that he had to encounter; and in pursuance of this resolution, he singled out the Times as the wickedest and most venomous of all organs of malignancy as the object of attack. Who will say that the multiplied provocations did not demand the heroic remedy to which he resorted?⁵⁷

Medill's paper described the mass demonstration of June 3 as an orchestrated attempt to "stir up the bad elements of our society and bring on the violence that the conspirators had threatened."⁵⁸ The "conspirators" organizing the masses were, according to the Tribune, "unhung villains--the refuse and offscourings of the Copperhead party--the men whose passions outstrip their sense...the men who have everything to gain and nothing to lose by popular commotions and bloodshed in the streets."⁵⁹ Fortunately, the Tribune said, the plans of these "villains" were thwarted by leaders of both the Republican and Democratic parties, who through discretion and cooperation preserved the peace.

The Chicago Tribune asserted that the cry for free speech by

embittered Democrats was ridiculous: "How much more 'free speech' do they want than that which they now enjoy? From morning till night they pour forth a flood of abuse and slander upon the government, oppose the war, clamor for peace, discourage enlistments, hide deserters, threaten to resist the draft, and say and do everything that can help the rebels, except taking up arms in their behalf."⁶⁰ Medill complained that the rebel sympathizers were treated too leniently and he showed exasperation with Lincoln's interference in the Times suppression. By "unconditionally revoking the order of General Burnside to suppress the organ of Jefferson Davis," Lincoln gave the Times and "all other traitorous sheets full license to blurt their treason in the face of the loyal masses of the nation."⁶¹ For "liberty-loving" papers like the Tribune, such softness on subversion was lamentable.

Like the Chicago Times, the New York World was edited by a head-strong journalist during the Civil War years. Manton Marble came to the World in 1862, marking a new phase in the paper's short, yet turbulent history. Founded in June 1860 by Philadelphia journalist Alexander Cummings and a group of New York businessmen, the New York World was first a one-cent religious daily. As a religious journal, the World reported ministerial conferences and other church-related activities, and omitted such upsetting matters as criminal trials, divorce announcements, and theatre advertising.⁶² The public did not embrace this rather bland and lifeless paper, and after incurring heavy losses, Cummings and his associates merged the World with the Courier and Enquirer (New York) in July 1861. Although the religious aspect was dropped, the new publication failed to gain substantial popularity.⁶³

At this point, "the paper decided to become more worldly and looked about for a lively editorial talent to bolster its solemn staff."⁶⁴ New York banker, August Belmont, and the city's mayor, Fernando Wood, were among a group of Democratic financiers and politicians who supposedly bought the faltering World. It is not certain who owned or financed the paper from April to September 1862, but by September, a company had been formed and interested Democrats bought shares of the paper. The Democratic group hired Manton Marble to reverse the fortunes of the New York World. Having worked on Boston papers and the New York Evening-Post, Marble came to the World with journalistic experience and a desire to lead.

A biographer of Marble, Mary Phelan, has linked the World

editor's social and political beliefs to the doctrines of Herbert Spencer. She asserts that "Marble's native fastidious temperament and the consciousness of his own mental superiority...disposed him to regard favorably Spencer's teaching that in society the most vigorous members will achieve success and hand on their qualities to future generations, and, society being thus purged of its weaker members, the race will be carried on by the most efficient."⁶⁵ As he approached the editorship of the World, this "survival of the fittest" philosophy has some application, for he "made a clear distinction between the public men of his own class, who were qualified--as he was--for leadership, from those whom he chose to call 'the masses.'"⁶⁶

When Marble arrived at the World in the spring of 1862, he worked to keep the paper on "the same independent course [upon] which it ha[d] hitherto won its measure of reputation, profit, and the applause of honest and patriotic men."⁶⁷ By September 1862, however, Democratic businessmen had control of the World's finances. Marble, too, committed himself to the Democratic party and he sought to attain a position of intellectual leadership within its organization. Though a Democratic organ, the New York World supported Lincoln's handling of the war. The paper declared it would "remain as loyal and devoted to the national administration as it [had] always been, while the administration continue[d] to pursue the wise, conservative, and constitutional course which it ha[d] hitherto pursued."⁶⁸ The preservation of the highest law in the land was central to the World's backing of the president: "We are for maintaining this war unflinchingly to the last extremity, and yet for holding on to the Constitution with the same

unyielding persistence."⁶⁹

Manton Marble's pro-war stance reflected his interpretation of the Constitution. A "self-dedicated constitutionalist," Marble rejected the notion of a "higher law" than the Constitution and believed in the sanctity of contract.⁷⁰ Thus, the Southern secession defied constitutional law and state sovereignty as the editor understood them. Marble believed that with the creation of the federal government, the states simultaneously created a collective binding force--a joint sovereignty. Because this joint sovereignty lay in a three-fourths majority of all states, no one state had the right to leave the Union without three-fourths of the whole number doing the same. The South's secession, then, was unconstitutional and the North was right in taking action against the law-breaking states, according to Marble.⁷¹

There were, however, many powers not delegated to the federal government that belonged exclusively to the states. The World editor identified slavery as one of these issues falling under state jurisdiction. Like Wilbur Storey, Marble denounced the Emancipation Proclamation as an unconstitutional edict, "for the Constitution confers on the federal government no power to change the domestic institutions of the States."⁷² The proclamation, combined with previous incidents of arbitrary arrests and suspensions of habeas corpus, prompted the World to assume a decidedly anti-Lincoln position during the rest of the war.

The New York World commented extensively on the Vallandigham arrest and the suppression of the Chicago Times in May and June, 1863.

In a May 19 editorial, the paper's assessment of Burnside was scathing: "General Burnside has filled full the measure of his folly and shame. As a soldier the slaughter pen of Fredericksburg is his monument, the arrest and conviction of Vallandigham his epitaph."⁷³ Burnside's General Orders, No. 38, as it will be remembered, forbade the circulation of the World in his district, but Manton Marble did not fret at the action; instead he saw the order as free advertising for the New York journal.⁷⁴ Regarding the suppression of the Chicago Times and the president's rescinding order, the World found it "impossible to isolate the case...from the great mass of proceedings to which it [stood] related; and taken in connection with the numerous, persistent, and wanton aggressions on freedom of discussion which [had] been perpetuated with Mr. Lincoln's sanction, the revocation merely add[ed] trepidation and inconsistency to the catalogue of his failings."⁷⁵ A further example of the New York World's "rancorous hostility"⁷⁶ toward the president came just days before its suppression. In an article of April 29, 1864, the Democratic newspaper commented on Lincoln's candidacy for reelection in November:

Were there one man of acknowledged statesman-like ability in the administration ranks, Mr. Lincoln would have no following whatsoever, and he is a possible candidate only because of the entire absence of brains among his party associates.

Thus, the World's anti-Lincoln position was firmly established by May 18, 1864 when the Democratic journal printed the proclamation that brought about its suspension. The proclamation, supposedly written by the president and countersigned by the secretary of state, recounted the weakened state of the Union forces and the recent northern defeats in Virginia, and set May 26 as "a day of fasting, humiliation, and

prayer."⁷⁸ It also called for the draft of 400,000 men to the Union ranks. Once it became clear that the proclamation was bogus, the Commander of the Department of the East, General John A. Dix, notified the alleged countersigner, Secretary of State William H. Seward, of the incident and inquired as to what action should be taken regarding a Europe-bound steamer, Scotia, carrying copies of the World. Seward responded with a public statement calling the purported presidential message "an absolute forgery." He insisted that "[n]o proclamation of that kind or any other has been made or proposed to be made by the President, or issued or proposed to be issued by the State Department or any Department of the Government."⁷⁹

After Seward issued his pronouncement, he ordered the delay of the Scotia so newspapers on board containing the forgery could be retrieved.⁸⁰ According to Gideon Welles's account of the event, the secretary of state proceeded to call on Secretary of War Stanton "to know whether such a document had passed over the regular telegraph. Stanton said there had not. Seward then asked if the World and Journal of Commerce [which had also published the proclamation] had been shut up. Stanton said he knew of their course only a minute before. Seward said the papers had been published a minute too long; and Stanton said if he and the President directed, they should be suspended. Seward thought there should be no delay."⁸¹ At this point, Stanton assumed control of the situation and in a telegram drafted in the War Department and signed by the president, gave Dix these instructions:

Whereas, there has been wickedly and traitorously printed

and published this morning in the New York World and New York Journal of Commerce, newspapers printed and published in the city of New York, a false and spurious proclamation purporting to be signed by the President and to be countersigned by the Secretary of State, which publication is of a treasonable nature, designed to give aid and comfort to the enemies of the United States and to the rebels now at war against the Government, and their aiders and abettors, you are, therefore, hereby commanded forthwith to arrest and imprison in any fort or military prison in your command the editors, proprietors, and publishers of the aforesaid newspapers, and all such persons as, after public notice has been given of the falsehood of said publication, print and publish the same, with intent to give aid and comfort to the enemy, and you will hold the persons so arrested in close custody until they can be brought to trial before a military commission for their offense. You will also take possession, by military force, of the printing establishments of the New York World and Journal of Commerce and hold the same until further orders, and prevent any further publication therefrom.⁸²

In a subsequent telegram, Stanton directed Dix to also take military possession of the Independent Telegraph Company's New York offices, arrest the manager, operators, superintendent, and pending further instructions, cease operation of the telegraph lines.⁸³ Similar orders to shut down telegraph offices, arrest personnel, and confiscate papers and dispatches were sent to military commanders in Washington, Baltimore, Philadelphia, Harrisburg, and Pittsburgh.⁸⁴ In addition, Stanton ordered Major-General Lewis Wallace to seize all copies of the New York World and Journal of Commerce arriving in Baltimore by express or mail.⁸⁵

Dix's orders came just hours after news reached Washington of the publication of the "base and treasonable forgery."⁸⁶ In the meantime, the fair-minded major-general conducted his own investigation and found that the proclamation was distributed by messenger to city newspapers between three and four o'clock a.m. and was "written on thin

manifold paper of foolscap size, like the dispatches of the Associated Press. In handwriting and every other respect it was admirably calculated to deceive."⁸⁷ Due to the late delivery, there was no time for editorial supervision and the forgery was set into type. By the time the "character of the thing was really ascertained, the papers had been sold and were in circulation."⁸⁸ Dix believed that neither Marble nor William C. Prine, editor of the Journal of Commerce, had prior knowledge of the forgery. In fact, Marble offered his services to Dix in apprehending the forger, and he asked Daniel H. Craig, the New York City agent for the Associated Press, to "give wings to the statement that the World has offered a \$500 reward for the discovery of the Forger of the Bogus Proclamation."⁸⁹

The major-general relayed his findings to Stanton and told the secretary he would execute the president's directive "unless the foregoing information [was] deemed sufficient by the President to suspend [it] until [his] investigation [was] concluded."⁹⁰ In two separate dispatches, Stanton expressed irritation at Dix's hesitancy to carry out the press shutdowns and arrests. In one message, he impressed upon the New York commander the supremacy of the Commander-in-Chief: "The President's telegram was an order to you which I think it was your duty to execute immediately upon its receipt";⁹¹ and in the other, Stanton blasted Dix for conducting his own, unauthorized investigation:

A great national crime has been committed by the publication. The editors, proprietors, and publishers, responsible or irresponsible, are in law guilty of that crime. You were not directed to make any investigation, but to execute the President's order; the investigation

was to be made by a military commission. How you can excuse or justify delay in executing the President's order until you make an investigation is not for me to determine.⁹²

Dix responded to Stanton's scolding with an explanation of his actions: "The investigation was made by me as commanding officer of the department before the President's order was received, as my dispatch showed. There has been none since. I understood the President's orders as commands to be executed, and there has been no unnecessary delay in the execution."⁹³

According to the World's account, Dix's men surrounded the newspaper's offices at 8:30 p.m. on May 18. This came as a surprise to its editors for "in view of the ample and plain explanation which had been made to General Dix early in the day by one of the editors, and by the editor-in-chief later in the day, it was not supposed that anything so extreme as a suppression of the paper was determined upon."⁹⁴ Guards placed at all entrances were ordered to "allow no persons to enter and to shoot anybody who should attempt to do so."⁹⁵ At 10:30 p.m., a military officer informed the editor in charge that he had instructions to stop all work on the premises, thereby shutting down press operations completely.

The official investigation mentioned by the secretary of war came to the same conclusion as Dix--the New York journals did not have prior knowledge of the forgery.⁹⁶ Stanton suspended action against the editors, but the newspapers remained shut down. On May 19, representatives of the New York Tribune, Express, Herald, and Sun sent the president a telegram pledging support for the two suppressed journals. Written by Daniel H. Craig, the letter recounted the work of "an

ingenious rogue" who, by delivering the forged proclamation on Associated Press manifold paper at a very late hour, gave newsmen on duty "no time for consideration as to the authenticity...of the document." The New York papers asked for the order to be rescinded, stating "that the fraud...was one which, from the circumstances attending it and the practices of the Associated Press, was extremely natural and very liable to have succeeded in any daily newspaper establishment in this city."⁹⁷

It was not until May 20 that the perpetrator and author of the proclamation, Joseph Howard, was caught. Howard, city editor of the Brooklyn Eagle and former reporter for the New York Times, wrote the fraudulent story, which had the "flavor of virtually admitting the war was lost,"⁹⁸ in hopes of winning big on the stock market. According to the World, Dix received information pertaining to the forger from a Mr. Kent of Kent and Clapp, a stockbroking firm. "It seems that Howard had consulted Mr. Kent and some other Wall Street brokers on the probable effect of a new call for troops, and that he showed some of them a draft of his proclamation."⁹⁹ Howard's scheme had its desired effect, for as Gideon Welles recorded on May 18, "Gold, under the present excitement, has gone up ten per cent."¹⁰⁰ John G. Nicolay and John Hay described the circumstances surrounding the fraud in this way: "In the tremulous state of the public mind which then prevailed, in the midst of the terrible slaughter of Grant's opening campaign, the country was painfully sensitive to such news, and the forged proclamation...accomplished for the moment the purpose for which it was doubtless intended."¹⁰¹ So, the conditions existing at the time of

World suspension, like those at the suppression of the Chicago Times, were tense due to Union military defeats. The resulting low public morale could account for the stringent measures taken by the Lincoln administration against the two Democratic papers.

Although he was the mastermind behind the forgery, Joseph Howard did not work alone. His accomplice, Francis A. Mallison, was once a copyist for the Associated Press and so was knowledgeable in the Associated Press' news-gathering and distribution procedures.¹⁰² Upon the seizure of Howard, John Dix notified Stanton and remarked on the prisoner's confession and cooperation: "He has been very frank in his confession--says it was a stock-jobbing operation, and that no person connected with the press had any agency in the transaction except another reporter, who took manifolds and distributed the proclamation to the newspapers, and whose arrest I have ordered."¹⁰³ As a result of the capture and imprisonment of the two men at Fort Lafayette, Stanton gave Dix these final orders, thereby ending the two-day suppression:

[The President] directs me to say that while, in his opinion, the editors, proprietors, and publishers of the World and Journal of Commerce are responsible for what appears in their papers injurious to the public service, and have no right to shield themselves behind a plea of ignorance or want of criminal intent, yet he is not disposed to visit them with vindictive punishment; and hoping they will exercise more caution and regard for the public welfare in the future, he authorizes you to restore to them their respective establishments.¹⁰⁴

The dispatch admitted no regret on the part of the administration for the suppressions, but continued to find fault with the two papers for irresponsible reporting. Stanton allowed the telegraph companies to

resume business on May 23.¹⁰⁵

Not surprisingly, Manton Marble was outraged over the shutdown of his paper and he protested vehemently "against the assumption of [the World's] complicity with this shameless forgery."¹⁰⁶ The World's characterization of Joseph Howard was most uncomplimentary. Howard's journalistic career, political persuasion (Republican), and personality were examined in full detail to show that the "calumnious insinuations...of knowledge or complicity with the fraud by any person having the slightest connection with THE WORLD, are utterly false and scandalous."¹⁰⁷ The New York paper found Howard to be "unscrupulous," "unreliable," and driven by greed.¹⁰⁸ Gideon Welles similarly castigated the proclamation forger: "He is of a pestiferous class of reckless sensation-writers for an unscrupulous set of journalists who misinform the public mind. Scarcely one of them has regard for truth, and nearly all make use of their positions to subserve selfish, mercenary ends. This forger and falsifier Howard is a specimen of the miserable tribe."¹⁰⁹

In a letter to Abraham Lincoln, Marble vented his anger and boldly questioned the president's authority to supersede constitutional law. The editor upheld the paper's innocence and asked Lincoln, "Had the Tribune and Times published this forgery...would you, sir, have suppressed the Tribune and Times as you suppressed The World and Journal of Commerce? You know you would not....Is there a different law for your opponents and for your supporters?"¹¹⁰ Although Lincoln recalled the suppression order, Marble told the president, "You have not made reparation for the wrong you have done. The injury

and the insult yet remain. The violation of the Constitution stands recorded, and unless adequately atoned, becomes a fatal precedent. For the purpose of gratifying an ignoble partisan resentment you have struck down the rights of the press, you have violated personal liberty, subjected property to unjust seizure, ostentatiously placed force above law, setting a dangerous example to those who love force above law."¹¹¹

Marble's strong words did not stop here. While he defended his right to fight for the Constitution, the editor spewed a barrage of accusations against the chief executive:

It is you that in this transaction stand accused before the people. It is you who are conspicuously guilty. It is upon you that history, when recording these events, will affix the crime of a disregard of your duty, oblivious of your oath, and a pitiable subserviency to party prejudice and to personal ambition, when the country demanded in the presidential office elevated character, devotion to duty, and entire self-abnegation.¹¹²

In conclusion, Marble warned the president that the citizen defending his constitutional rights would prevail over negligent and oppressive elected officials, as he was equipped with voting and impeachment powers and an overriding sense of duty.

Marble believed that the administration had "been watching for a pretext to pounce upon the opposition and infuse into it such a dread as would restrain its honest boldness," and it found an opportunity to "entrap" the World with Howard's forgery.¹¹³ The World editor was not alone in his indignation at the suppression as evidenced by a number of supportive letters received by Marble in the days following the shutdown. F. A. Canfield congratulated Marble for his "admirable

address to the President" and expressed, "if anything short of force shall ever unseat the despots who now side on the rich of the nation--if any thing can bring home to us a true conception of our position, your address should be a most potent means toward effecting the accomplishment of that object."¹¹⁴ Another devoted reader offered praise for the editor's "manly letter to Abraham Lincoln" and sent in money for a six-month subscription. He also pledged to act as the World's agent in the solicitation of more subscriptions, for as he wrote Marble, "I wish to God I was rich enough to send You a check for 1000 Dollars, for You deserve it."¹¹⁵ J.W.F. Rathbone supported Marble and the World, but urged caution in this letter of May 24:

My dear Fort Lafayette Friend,

You have been outraged, and I sympathize with you,
altho I think you rather too severe with Abraham.

Don't, for our country's sake, push it too far.¹¹⁶

Reaction to the bogus proclamation and suppression among the major New York journals was mixed. The Herald, edited by James Gordon Bennett, was often critical of Lincoln's policies, but supported the Union cause nonetheless.¹¹⁷ The Herald's view of the World suspension was noncommittal as it related the incident factually and impartially. The only editorial comment put forth by the paper condemned hoaxes in general and avoided the mention of specific details: "[R]ecent acts show that there is still a dangerous tendency to encroachments upon personal rights....It is hoped that, appropos to the present excitement, the whole aspect of hoaxes through the newspapers will be well ventilated."¹¹⁸ A possible reason for the Herald's evasiveness in reporting the bogus proclamation was that Bennett's paper very nearly

fell victim to the forgery itself. The journal "had run off 20,000 copies [with the proclamation] when the night foreman heard that neither the Times nor the Tribune had word about the news. He stopped the presses and investigated, got the bundles off the drays, and destroyed every copy."¹¹⁹

In contrast to the scant coverage of the Herald, Horace Greeley's New York Tribune reported the news of the World suppression on its front page (May 19) and commented, "It is unnecessary to waste words in characterizing the criminality of this hoax. Whatever its design, it was the basest and most infamous outrage on the public, as well as on the individual newspapers concerned."¹²⁰ The forged document was not delivered to the Tribune ("probably an accident"¹²¹), but Greeley's paper expressed sympathy for the World, for "no amount of care in a well-regulated newspaper office seems to be sufficient to prevent frauds by persons who are acquainted with the internal economy of such an establishment."¹²²

Greeley's opinion of Abraham Lincoln wavered throughout the Civil War. Generally, he "respected Lincoln's sincerity and motives, [but] ...he had little faith in the President's executive ability or intelligence."¹²³ Lincoln's action against the two New York journals appears to be one case that contributed to Greeley's skepticism of the president's judgment as revealed in a May 21 editorial: "A government can commit no graver mistake than the infliction of punishment for an act where no guilt of intention can be imputed to the parties concerned, and when they were simply the dupes of some designing knave."¹²⁴

Under the editorial guidance of Henry Raymond, the New York Times, unlike the Tribune and Herald, was a powerful pro-Lincoln force wholly dedicated to the Republican party. The Times blamed the World and Journal of Commerce for carelessness in printing the forgery. In response to the sympathy shown the two papers by other New York publishers, the Times countered, "[I]t seems to us little less than mockery--much like pleading the freedom of trade for the receiver of stolen goods."¹²⁵ The Republican paper declared that the responsibility for the scandal lay first with the forger, but also "with the promulgators, without whom the forgery would have been futile."¹²⁶ It faulted the World for not investigating the story and stated that any "competent staff" would have detected the fraud.¹²⁷ Though the New York Times had harsh words for the editors of the World and Journal of Commerce, it did not condone the judgment passed on the two journals, for "punishment should never precede trial." Instead of shutting down the papers' operations, the Times suggested an alternate punishment: "It would have been perfectly reasonable for the government to have arrested and held the editors...in close custody for trial and punished in case their guilt was proved." The suspension was "the infliction of punishment without trial or inquiry--a thing abhorrent not simply to common law, but to all law, military law included."¹²⁸

The suppression did nothing to tame the World's anti-Lincoln invective as it continued to ridicule the president and his vice presidential running mate, Andrew Johnson. In a June 9 editorial, the Democratic mouthpiece declared, "The age of the statesman is gone; the

age of rail-splitters and tailors, of buffoons, boors and fanatics, has succeeded....Mr. Lincoln and Mr. Johnson are both men of mediocre talents, neglected education, narrow views, deficient information, and coarse, vulgar manners."¹²⁹ In addition to written assaults on the president, Manton Marble took the advice of Arnasa Parker, who, in a letter to the editor, urged, "We must not submit quietly to the great outrage that has been perpetrated on you by the American nation. The courts must be appealed to for redress--criminally and civilly."¹³⁰

Marble did appeal to Democratic Governor Horatio Seymour for aid in the conviction of those who seized and silenced the World's presses. On May 20, 1864, the editor wrote Messrs. Comstock and Cassidy, owners of the Albany Argus, and asked them if Seymour was "contemplating any action in regard to the illegal arbitrary and outrageous proceedings by which the publication of the World [had] been suppressed."¹³¹ William Cassidy telegraphed back and assured Marble of the governor's support. On May 23, Seymour addressed the matter in correspondence to the District Attorney of the County of New York, A. Oakey Hall, expressing concern at the confused state of civil liberties in his state:

Unless all are made secure in their rights of person and property, none can be protected....It is now charged that...at a moment when the national credit is undergoing a fearful trial, the organs of commerce are seized and held, in violation of constitutional pledges....These things are more hurtful to the national honor and strength than the loss of battles....Our state and local authorities must repel this ruinous interference.¹³²

The governor instructed Hall to investigate the World and Journal of Commerce suppressions and stated, "If these acts were illegal, the

offenders [General Dix and his men] must be punished."¹³³

The subsequent legal proceedings raised two significant questions. First, did New York State courts have jurisdiction in this matter; and second, were Dix and the other officers liable to prosecution for enforcing an executive order? On June 13, 1864, a New York City court grand jury found it "inexpedient to examine into the subject," and refused to pass down an indictment.¹³⁴ In response to this "inaction," Seymour again wrote District Attorney Hall and reiterated that it was his duty "to take care that the laws of the State are faithfully executed."¹³⁵ Because the grand jury "refused to do their duty, the subject of the seizure of these journals should at once be brought before some proper magistrate," said the governor. Seymour indicated his desire to see the case further prosecuted and Hall proceeded to collect evidence, procure affidavits, and submit testimony to City Judge A. D. Russell. The district attorney charged that General John A. Dix and five of his subordinates were guilty of kidnapping and inciting to riot. With the evidence before him, Judge Russell found cause to issue warrants for the arrest of Dix and the others. New York authorities arrested the men on July 1, but they were set free on verbal recognizance while they awaited trial.¹³⁶

"While I regret that the papers should have been suppressed or meddled with, I would not, I think, permit a general officer to be arrested and tried by a State judge for obeying an order of the President."¹³⁷ Such was the opinion of Gideon Welles and of Dix's attorneys, Edward Pierrepont and William E. Evarts. Citing the indemnity

clause (Section 4) of the Habeas Corpus Act of March 3, 1863, Pierrepont and Evarts argued that the accused were immune from prosecution for carrying out military arrests and seizures authorized by the president. The indemnity clause further provided that national officials sued for the implementation of war-related measures could remove their cases from state to federal courts, or appeal state court rulings. (This provision served to increase federal court jurisdiction over internal security matters.¹³⁸) The defense argued, too, that "since the grand jury had considered the case, and failed to indict, the law was fully vindicated."¹³⁹ The prosecution countered with accusations that "a Mr. Halleck of the World had been taken into custody against his will, and that, as an incident of the arrest, crowds assembled and a turbulent condition resulted," thus the charges of kidnapping and inciting a riot.¹⁴⁰ It also asserted the unconstitutionality of the Indemnity Act, making Dix and the other defendants accountable for their actions.

In the decision, The People v. John A. Dix and Others, Judge Russell bitterly denounced the Act of Congress of March 3, 1863 and the assumed power of the president, but his final judgment lacked the same punch. Regarding the indemnity clause, Russell stated, "If that provision is constitutional, it assimilates the President of the United States during the existence of the present rebellion to an absolute monarch, and makes him incapable of doing any wrong."¹⁴¹ Having affirmed the illegality of the Indemnity Act, the city magistrate decreed that Dix and the others be held "subject to the

action of the grand jury of the city and county."¹⁴² No further legal action was taken, thus ending the case at the municipal court level and bypassing the larger legal questions relating to the extent of Lincoln's war powers and federal authority in the states.

On behalf of the imprisoned Joseph Howard, Reverend Henry Ward Beecher wrote to John D. Defrees, superintendent of public printing in Washington, hoping to secure the release of the author of the bogus proclamation. Beecher pleaded Howard's case with great earnest:

He was the tool of the men who turned states evidence and escaped; & Joe had only the hope of making some money... & had not foresight or consideration enough to perceive the relations of his act with the Public Welfare....He has been brought up in my parish & under my eye and is the only spotted child of a large family.¹⁴³

Defrees forwarded the correspondence to the president and on August 23, Lincoln notified Stanton, "I very much wish to oblige Henry Ward Beecher, by releasing Howard; but I wish you to be satisfied when it is done. What say you?"¹⁴⁴ The secretary of war concurred and discharged Joseph Howard from Fort Lafayette on August 24. On September 20, 1864, after receiving a written appeal from Howard, Lincoln ordered Francis Mallison's release.¹⁴⁵

NOTES TO CHAPTER II

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CHAPTER III

LINCOLN, THE PRESS, AND THE CONSTITUTION

The liberties of the People Have Been Invaded under the pretense of preserving liberty; their rights assailed under a pretended defense of those rights; their constitutional privileges destroyed under the plea of sustaining the ConstitutionThe Liberty of the Press Has Been Invaded--newspapers have been suppressed by military power, persons have been seized, imprisoned, punished, without warrant, without trial, without judicial examinations, and our boasted freedom is fast becoming a byword and a mockery.¹

To opposition newspapers, the Lincoln administration's sporadic, and sometimes oppressive, press policy triggered fears of despotism and tyranny. In a society that had grown accustomed to unrestricted press freedom for over half a century, such government-imposed measures created great tension and resentment. The broad war powers assumed by the president further fueled the passions of Americans who viewed Lincoln's flexible interpretation of the Constitution as a threat to the future of democracy. For the president, "the Civil War became a cram course in the unexplored aspects of the Constitution."² Lincoln believed the Constitution was neither outdated nor defective, but rather was capable of meeting the challenge posed by civil war.

Abraham Lincoln recognized the influence of the printed word early in his political career in Illinois, and in May 1859, he purchased control of the Illinois Staats-Augeizer. According to his

contract with German printer Theodore Canisius, Lincoln stipulated that if the paper failed to publish weekly or if it printed "any thing opposed to, or designed to injure the Republican party, said Lincoln may, at his option, at once take possession of said press, type &c, and deal with them on his own. On the contrary, if said Canissius shall issue a newspaper, in all things conformable hereto, until after the Presidential election of 1860, then said press, types &c are to his property absolutely, not, however, to be used against the Republican party; nor to be removed from Springfield without the consent of said Lincoln."³ Evidently, Lincoln appreciated the power of the press and the political influence of the German community.

As president, his sensitivity to public opinion continued. Lincoln corresponded occasionally with "certain leading journalists" and worked to ensure that his views were properly conveyed in the press.⁴ As he stated, "It is at all times proper that misunderstanding between the public and the public servant should be avoided; and this is far more important now than in times of peace and tranquility."⁵ Maintaining cordial relations with prominent newspapermen was important to the president as evidenced by his great efforts to "court" James Gordon Bennett, editor of the influential New York Herald. Because the Herald had a large domestic and foreign circulation, Lincoln sought to redirect the paper from its meandering course to a straight Republican line. Bennett was offered and refused a position as Minister to France, but a number of other journalists did accept governmental posts in the Lincoln administration.⁶

From the start of his presidency, Lincoln encountered a steady

barrage of attacks from both the Democratic and Republican press. Although there were, certainly, instances of governmental interference in press operations, he refrained from implementing a blanket press policy to silence critics. Lincoln's philosophy regarding military press suppression is reflected in this message of October 1, 1863 to General John M. Schofield, Commander of the Department of the Missouri:

You will only arrest individuals, and suppress assemblies, or newspapers, when they may be working palpable injury to the Military in your charge; and, in no other case will you interfere with the expression of opinion in any form, or allow it to be interfered with violently by others. In this, you have a discretion to exercise with great caution, calmness and forbearance.

Schofield's earlier arrest (July 1863) of William McKee, editor of the Missouri Democrat, for publishing a confidential letter written to the general by the president, met with Lincoln's censure. Even after Schofield explained the circumstances surrounding the arrest, the president remained displeased: "I regret to learn of the arrest of the Democrat editor. I fear this loses you the middle position I desired you to occupy."⁸

An incident recounted by Francis B. Carpenter, a portrait artist who spent many months in the White House, further illustrates Lincoln's regard for press freedom. Apparently, at a social gathering in the winter of 1864, two women approached Lincoln, one of whom "playfully" request the president to "suppress the infamous Chicago Times." As Carpenter narrated, "After a brief pause, Mr. Lincoln asked her if she had ever tried to imagine how she would have felt, in some former administration to which she was opposed, if her favorite newspaper had

been seized by the government, and suppressed. The lady replied that it was not a parallel case; that when the nation was struggling for its very life, such utterances as were daily put forth in that journal should be suppressed by the strong hand of authority; that the cause of loyalty and good government demanded it." To this, Lincoln reportedly replied, "I fear you do not fully comprehend the danger of abridging the liberties of the people. Nothing but the very sternest necessity can ever justify it. A government had better go to the very extreme of toleration, than to do aught that could be construed into an interference with, or to jeopardize in any degree, the common rights of its citizens."⁹

Following the arrest of Clement C. Vallandigham in May 1863, a group of New York Democrats assembled and drew up resolutions condemning the Lincoln administration's violation of constitutional rights. The Democratic meeting, chaired by Erastus Corning, demanded "that the Administration...be true to the Constitution; [that it] recognize and maintain the rights of the States and the liberties of the citizen; [that] everywhere outside of the lines of necessary military occupation and the scenes of insurrection [it] exert all its powers to maintain the supremacy of the civil over the military law."¹⁰ The administration's military arrest and trial of a man in an area where martial law had not been declared and where civilian courts still functioned, was, to the New York gathering, an abhorrent abuse of civil liberties. The group further called for the release of Vallandigham, yet it assured the president of its "hearty desire to support the government in every constitutional and lawful measure to

suppress the existing rebellion."¹¹

Lincoln's lengthy response to Corning and the other Democrats revealed his justification both for the arrest of Vallandigham and for the government's suspension of constitutional rights. As for the complaint that military arrests "outside of the lines of necessary military occupation," were unconstitutional, the president insisted that such arrests "are constitutional wherever the public safety does require them--as well in places to which they prevent the rebellion [from] extending...as well where they may restrain mischievous interference with the raising and supplying of armies...as well where they may restrain the enticing of men out of the army."¹² Regarding Vallandigham's arrest, Lincoln maintained that it was not effected because Vallandigham was "damaging the political prospects of the administration, or the personal interests of the commanding general; but because he was damaging the army, upon the existence, and vigor of which, the life of the nation depend[ed]."¹³

In times of rebellion, choices have to be made, said Lincoln. "Must I shoot a simple-minded soldier boy who deserts, while I must not touch a hair of a wily agitator who induces him to desert? This is none the less injurious when effected by getting a father, or a brother, or friend, into a public meeting, and there working upon his feelings, till he is persuaded to write the soldier boy, that he is fighting in a bad cause, for a wicked administration of a contemptible government, too weak to arrest and punish him if he shall desert. I think that in such a case, to silence the agitator, and save the boy, is not only constitutional, but, withal, a great mercy."¹⁴ That

Vallandigham was, in the administration's eyes, a "wily agitator" there can be no doubt, and as such, the government saw the need to suppress his subversive activities.

Lincoln put forth a similar argument in July 1861 when, in a message to the special session of Congress, he explained the necessity of his extension of presidential power during and after the Fort Sumter crisis. Contrary to the belief of some critics, the president stated that the Constitution had not been violated, for in its allowance for the suspension of the writ of habeas corpus, "provision was plainly made for a dangerous emergency."¹⁵ "[A]re all the laws, but one, to go unexecuted, and the government itself to go to pieces, lest one be violated?" asked the president. "[W]ould not the official oath be broken, if the government should be overthrown, when it was believed that disregarding the single law, would tend to preserve it?"¹⁶

Addressing those who questioned the president's assumption of substantial war powers without first receiving congressional authorization and approval, Lincoln posited, "[I]t cannot be believed the framers of the instrument [the Constitution] intended, that in every case, the danger should run its course, until Congress could be called together; the very assembling of which might be prevented as was intended in this case, by the rebellion."¹⁷ Apparently satisfied with the president's explanation, Congress, on August 6, 1861, gave Lincoln a blanket approval for the acts, proclamations, and orders issued by him during the preceding five months.¹⁸ Thomas Jefferson concurred with Lincoln as to the delicate balance between written law and public necessity. In an 1810 letter to J.B. Colvin, Jefferson wrote:

A strict observance of the written law is doubtless one of the high duties of a good citizen, but it is not the highest. The laws of necessity, of self-preservation, of saving our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty and property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means.¹⁹

As Andrew McLaughlin observed, the Constitution created difficulties for the Lincoln administration in its implementation of war policy. Problems arose first from "the plain fact that the Constitution is peculiarly reticent on the subject of war and the conduct of war; [and] second, from the necessary conflict between provisions calculated to maintain personal liberty and to secure ample and considered justice on the one hand, and the imperious demands for effective warfare on the other."²⁰

In defining his war powers as derived from the Constitution, Lincoln "wedded" the Commander-in-Chief clause to that which made it the president's duty to "take care that the laws be faithfully executed."²¹ By combining these two provisions, Lincoln departed from established precedent and assumed the power to declare the nation in a state of war, increase the size of the regular army, suspend the writ of habeas corpus, appropriate federal funds, and authorize arbitrary arrests without the benefit of congressional consultation. These actions, argues Harold Hyman, "flowed from the Constitution's recognition of the employment of force in certain situations." Furthermore, "no rule existed to gauge when the moment had arrived to exert force." As such, Lincoln's swift and strong measures against the rebellious South and disloyal northerners were "justifiable not as extraconstitutional spasms but as constitutional recourses."²²

Lincoln received legal and constitutional justification for his extensive war powers from William Whiting, solicitor of the War Department. It was Whiting's belief that necessity mandated a flexible interpretation of the Constitution. In order for the government to defend itself and uphold its "authority and dignity," Whiting asserted that the assumption of broad powers was essential.²³ Not only was the government to be protected, but so too were the people for whom it functioned: "Whatever hostile military act is essential to public safety in civil war is lawful."²⁴ Whiting also argued that the "rights of war and the rights of peace cannot coexist. One must yield to the other....[T]he constitution is framed with full recognition of that fact; it protects the citizen in peace and in war; but his rights enjoyed under the constitution, in time of peace are different from those to which he is entitled in time of war."²⁵ Suspensions of constitutional freedoms during wartime, then, were imposed with the public interest in mind, and were instituted as precautionary measures, not vindictive ones. Support for Lincoln's war measures came, too, from Attorney General Edward Bates. In a communication to the president regarding the suspension of the writ of habeas corpus, Bates commented upon the larger question of presidential power:

To my mind it is not very important whether we call a particular power exercised by the President a peace power or a war power for undoubtedly he is armed with both. He is the chief civil magistrate of the nation and being such and because he is such he is the constitutional Commander in Chief of the Army and Navy, and thus within the limits of the Constitution he rules in peace and commands in war and at this moment he is in the full exercise of all the functions belonging to both those characters.²⁶

In retrospect, Andrew McLaughlin found that "if highly and finely-drawn constitutional construction had been allowed to impede and hamper the operations of government at every step, one or two results would probably have followed--the union would have been destroyed, or the Constitution and the law would have given way to the mailed fist of a dictator."²⁷ A number of opposition editors of the Civil War era would disagree with McLaughlin, as they held that the president's "stretching" of the Constitution was tyrannical and acceptable under no circumstances. In "The Lincoln Catechism, Wherein the Eccentricities & Beauties of Despotism Are Fully Set Forth: A Guide to the Presidential Election of 1864," J.F. Feeks published a pamphlet revealing the extremity of anti-Lincoln sentiment. The following excerpts show not only the harshness of opposition invective, but "how far these attacks [against the administration] could go in print."²⁸

What is the Constitution?
A compact with hell--now obsolete.

By whom hath the Constitution been made obsolete?
By Abraham Africanus the First.

What is the meaning of the word 'Liberty'?
Incarceration in a vermin-infested bastile [sic].

What is the duty of a Secretary of War?
To arrest freemen by telegraph.

What is the meaning of the word 'traitor'?
One who is a stickler for the Constitution and the laws.

What is the meaning of the word 'law'?
The will of the President.

Have the people any rights?
None but such as the President gives.

Who invented the war power?
Abraham Lincoln.

For what purpose did he invent the war power?
That he might not have to return to the business of
splitting rails.

What is the meaning of the President's oath that he
"will to the best of his ability, preserve, protect
and defend the Constitution of the United States?"
That he will do all in his power to subvert and destroy
it.²⁹

There is no doubt that Abraham Lincoln extended the powers of the presidency beyond any previous level, but the Constitution survived the ordeal of the Civil War, and in the end, democracy prevailed.³⁰ During Lincoln's presidency, anti-administration criticism never ceased, yet many violators of federal and military law facing severe punishment were reprieved. "Deserters were somehow saved from death; orders against disloyal persons were enforced with discretion; extenuating circumstances were given weight; escape from penalties was made possible by taking the oath of allegiance; ignorance of the law was often accepted as an excuse; first offenses were passed over; and spies were even released on the acceptance of stipulated terms."³¹

During the first half of the nineteenth century, "freedom without restraint [had become] habitual" and states rights constitutionalism dominated political thought.³² As such, Lincoln's expansion of federal power disillusioned and frightened many Americans who clung to a strict interpretation of the Constitution. William Whiting castigated these narrow constructionists for their belief that the Constitution was "incapable of adaptation to...changing conditions, as if it were a form of clay which the slightest jar would shatter; or an iron chain,

girding a living tree, which could have no further growth unless by bursting its rigid ligature."³³ Instead, Whiting found the document to resemble the tree itself, "native to the soil that bore it, waxing strong in sunshine and in storm, putting forth branches, leaves, and roots...and flourishing with eternal verdure."³⁴

Saving the Union was Lincoln's primary goal, and stretching the known boundaries of constitutional law was seen by him as a means by which to attain this goal. As the president explained to Albert C. Hodges in April 1864:

By general law, life and limb must be protected, yet often a limb must be amputated to save a life, but life is never wisely given to save a limb. I felt that measures otherwise unconstitutional, might become lawful by becoming indispensable to the preservation of the nation. Right or wrong, I assumed this ground and I now avow it. I could not feel that to the best of my ability I have even tried to save the Constitution, if to save slavery, or any other minor matter, I should permit the wreck of the government, country, and Constitution together.³⁵

In spite of the many governmental intrusions on personal and press liberties, though, "the prominent feature of the whole dreadful struggle is not what was done illegally, but what was not done at all."³⁶

Although Lincoln refrained from instituting a stringent, nationwide press censorship policy, incidents like the suppression of the Chicago Times and New York World cannot be overlooked. In both instances, the president regretted the actions, but they were implemented nonetheless. Looking first at the Chicago Times shutdown, one finds Lincoln juggling constitutional freedoms and military credibility. In a letter to Isaac Arnold a year after the suppression,

Lincoln admitted that he was "embarrassed with the question between what was due to the military service on the one hand, and the Liberty of the Press on the other."³⁷

Ironically, on the day General Burnside issued the suppression order against the Times, Secretary of War Edwin Stanton wrote the commander, urging him to exercise "great care" in dealing with state officials and to refrain from interfering with state political affairs. Stanton further stated that no one could better understand than Burnside "what harm may be done by an indiscreet or foolish military officer, who is constantly issuing military proclamations, and engaging in newspaper controversies upon questions that agitate the public mind."³⁸ Suppressing a journal, it was believed, would "likely do more harm than the publication would do."³⁹ In a postscript to the letter, the Secretary of War indicated that the president had been informed of the Chicago Times shutdown and he wished for Burnside "to take an early occasion to revoke that order."⁴⁰ Revealing some irritation with Burnside, who took it upon himself to suspend the journal, the postscript also stated that "while military movements are left to your judgment, upon administrative questions such as the arrest of civilians and the suppression of newspapers not requiring immediate action, the President desires to be previously consulted."⁴¹ For some reason, this message was not telegraphed, but mailed, so Burnside did not learn of Lincoln's initial displeasure until troops had already seized the Times' offices. "Had this word from Washington...been transmitted by telegraph instead of by mail, it is possible that the Times might never have been actually suppressed," for Burnside carried

out the suppression order the day after he issued it.⁴²

There has been speculation as to why Lincoln rescinded Burnside's General Orders, No. 84. J. G. Randall argued that Lincoln's deep respect for press freedom and constitutionally guaranteed rights guided his decision: "[The president's] humane sympathy, his humor, his lawyer-like caution, his dislike of arbitrary rule, his willingness to take the people into his confidence and to set forth patiently the reasons for unusual measures--all these elements of his character operated to modify and soften the acts of overzealous subordinates."⁴³

Craig D. Tenney objected to Randall's saintly characterization of Lincoln, declaring that "it was not a tender regard for the First Amendment that guided Lincoln's hand in signing the order lifting the suppression. It was something more basic to the president's nature--a regard for politics."⁴⁴ Citing a remark made by Lincoln in 1864--"I am far from certain to-day that the revocation was not right"⁴⁵--Tenney maintained that the president was ambivalent about the shutdown and that political considerations triggered the rescinding order more than anything else. The Chicago group petition, the Arnold-Trumbull message, and the opinions of Cabinet members weighed heavy with the president, said Tenney. With Lincoln's hesitance to lift the order and his "tacit acceptance" of previous newspaper suppressions, Tenney argued against the assertion that the president was a friend of the press. Rather, Lincoln was "more ready to accommodate political cronies than opposition editors."⁴⁶ Political considerations most surely played an important role in Lincoln's revocation decision, but that does not discount the president's regard for the freedom of the

press, nor does it explain his first reaction to the suspension as revealed in Stanton's delayed message to the general. The president's reluctance to act on June 2 or 3 was probably due to his desire to uphold the integrity of military authority. When pressure mounted in Chicago for presidential intervention, however, Lincoln overruled Burnside and by revoking the order, took the action he desired from the very beginning. It would appear, then, that a synthesis of the Randall and Tenney interpretations would most nearly describe the motivations and reasoning behind Lincoln's freeing of the Chicago Times from military possession.

Just as General Burnside proved to be a thorn in Lincoln's side in the Chicago Times suppression, so too did Edwin Stanton in the New York World shutdown. Upon hearing of the publication of the bogus proclamation, Stanton "without waiting for an investigation...caused the immediate issuance of a sharp order, for which he obtained Lincoln's signature, which soon became revealed as a serious executive blunder."⁴⁷ Besides being hastily issued, the order was written in the "language of a military despotism most uncongenial to the mind and nature of Lincoln."⁴⁸ Stanton's involvement with the press started with his takeover of the telegraph lines in 1862 and it remained vigorous throughout the rest of the war. He had a hand in the numerous suppressions prior to the World shutdown and as many of his contemporaries learned, "Stanton could be a man of Machiavellian finesse whenever it suited his purpose."⁴⁹

Attorney General Edward Bates distrusted the Secretary of War, finding him "brusque" and "uncivil." Throughout his diary, Bates com-

mented upon Stanton's "imbecility" and "evil" nature, and on one occasion, he wrote, "If the President had a little more vim, he would either control or discharge Mr. S[tanton]."⁵⁰ Lincoln, too, was aware of the influence Stanton had on governmental functions, especially those relating to the press. Speaking to a small crowd at Jersey City, New Jersey in June 1862, the president kept his remarks brief, explaining, "The Secretary of War, you know, holds a pretty tight rein on the Press, so that they shall not tell more than they ought to, and I'm afraid that if I blab too much he might draw a tight rein on me."⁵¹

As far as the New York World suspension was concerned, Secretary of the Navy Gideon Welles viewed the military takeover to be "hasty, rash, inconsiderate, and wrong."⁵² Although the Democratic journal had in the past "worked assiduously against the Union and the Government," Welles believed the paper, in this case, was the innocent victim of the machinations of a "knave and wretch."⁵³ The navy secretary named Secretary of State William Seward as the instigator of the "arbitrary and oppressive proceedings" against the New York World, but the War Department head was an eager accomplice: "Stanton, I have no doubt, was willing to act on Seward's promptings, and the President, in deference to Seward, yielded to it."⁵⁴ Incidents such as the World shutdown, said Welles, "weaken the Administration and strengthen its enemies. Yet the Administration ought not to be condemned for the misdeeds of one, or at most two, of its members. They would not be if the President was less influenced by them."⁵⁵ One has to wonder whether governmental action would have been taken had Stanton and

Seward not become involved with the bogus proclamation scandal, but the president must not be excused, for the military orders sent to New York were issued under his signature.

When compared to the restrictions placed on the press during the First World War, Civil War press controls appear far less defined and organized. Unlike Lincoln, who assumed his war powers independently, Woodrow Wilson received his authority from Congress, and he worked closely with the House and Senate in conducting war policy. One piece of legislation emerging from this cooperation was the Espionage Act, passed June 15, 1917. Title I, Section 3 posed the greatest threat to press activity as it bridled anti-war sentiment and free war reporting:

Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies and whoever...shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty...or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States shall be punished by a fine of \$10,000 or imprisonment for not more than twenty years or both.⁵⁶

Publications guilty of these provisions were, according to Title XII, unmailable and "whoever shall use or attempt to use the mails or Postal Service...for the transmission of any matter declared by this title to be nonmailable, shall be fined not more than \$5,000 or imprisoned not more than five years or both."⁵⁷

On October 6, 1917, the Trading-with-the-Enemy Act placed further restrictions on civil liberties. Censors were authorized to inspect all communications transmitted abroad, and foreign publications were

required to submit sworn translations to the local postmaster.⁵⁸ Congress passed another appendage to the Espionage Act on May 16, 1918 in the form of the Sedition Act. This legislation provided "heavy fines and imprisonment for the writing or publication of 'any disloyal, profane, scurrilous, or abusive language about the form of Government of the United States, or the Constitution, military or naval forces, flag, or the uniform of the army or navy of the United States,' or any language 'intended' to bring these things 'into contempt, scorn, contumely, or disrepute.'"⁵⁹ Nearly 900 persons were convicted under the Espionage Act, and as can be imagined, the legislation prompted much debate as to its constitutionality. James Parker Hall, in a 1921 Columbia Law Review article, likened the Espionage Acts to the draft, both of which were necessary war measures. "Neither is the least likely to become a permanent policy of peace," said Hall, "and those who are proclaiming the former as a deadly blow at free speech are, in my judgment, but engaged in the age-old occupation of tilting at windmills."⁶⁰

Hall also deemed convictions under the Espionage Acts "far less arbitrary and unjust than...the arrests of the Civil War, which took the place of repressive legislation."⁶¹ There was a reason for the lack of legislation to control disloyalty during the Civil War, though, that being the existence of anti-war spokesmen in the critical border states. "Legislation applying to all alike would have been unjust and alienating to the border state doubters, and would have been widely criticized as an illustration of the despotism so often charged against Lincoln by his opponents."⁶² Lincoln's desire to keep

these states in the Union doubtless hindered any firm federal policy against disloyal persons in the early stages of the war.

State libel laws were the only means of controlling the press when war broke out, and because they "were designed chiefly to afford a remedy for individuals who suffered personal injuries, such as defamation of character, and did not recognize injuries which might be inflicted upon the public through criticisms tending to undermine the government," the Lincoln administration resorted to military force rather than civil law to curb disloyal publications.⁶³ Papers like the Chicago Times and the New York World felt the tight grasp of military authority, yet their suspensions were short-lived as were those of other northern newspapers. Due to this hesitancy to silence the opposition for extended periods, it has been noted that the "government did far less than enthusiastic Union men of the time would have wished in the way of controlling the press."⁶⁴

The suppressions of the Chicago Times and the New York World broke with the unrestrained press freedom that had been enjoyed throughout the nineteenth century. The suspensions were not, however, typical of the government's policy toward the press. In fact, Lincoln did not have a system of regulatory measures to control the press; instead, he advocated noninterference whenever possible so as to prevent creating greater sympathy for opposition journals. The instances of one-edition seizures and paper shutdowns prompted charges of constitutional abuse and despotism, but "the prevailing policy was one of tolerance and leniency."⁶⁵

Although opinion varies concerning the constitutionality of the

Times and World suppressions, few would disagree that the actions were hasty and impolitic. Both suspensions were imposed for perceived military reasons, yet with closer inspection and greater patience on the part of those who enacted the orders, the resulting embarrassment to the Lincoln administration could have and should have been avoided. Lincoln's expansion of presidential and federal power during the Civil War was accompanied by uncertainty as to how it should be handled, for no precedent existed to guide the exercise of the power. The Chicago Times and the New York World fell victim to the mishandling of this newfound authority. In the words of James Madison, "The essence of government is power, and power, lodged as it must be in human hands, will ever be liable to abuse."

NOTES TO CHAPTER III

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- ³ Roy P. Basler, et al., eds., The Collected Works of Abraham Lincoln, Vol. III (New Brunswick, N.J., 1953), p. 383.
- ⁴ James E. Pollard, The Presidents and the Press (New York, 1947), p. 348.
- ⁵ John G. Nicolay and John Hay, eds., Complete Works of Abraham Lincoln, Vol. II (New York, 1894), p. 949.
- ⁶ Harry J. Carman and Reinhard H. Luthin, Lincoln and the Patronage (Gloucester, Mass., 1964), p. 125.
- ⁷ Basler, Collected Works, Vol. VI, p. 492.
- ⁸ Ibid., p. 326.
- ⁹ F. B. Carpenter, The Inner Life of Abraham Lincoln: Six Months at the White House (New York, 1869), pp. 156-157.
- ¹⁰ Official Records of the War of the Rebellion, Ser. II, Vol. V (1899), p. 655.
- ¹¹ Ibid., p. 656.
- ¹² Basler, Collected Works, Vol. VI, pp. 265-266.
- ¹³ Ibid., p. 266.
- ¹⁴ Ibid., pp. 266-267.
- ¹⁵ Basler, Collected Works, Vol. IV, p. 430.
- ¹⁶ Ibid.
- ¹⁷ Ibid., p. 431.
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- ¹⁹ Andrew A. Lipscomb, ed., The Writings of Thomas Jefferson, Vol. XI (Washington, D.C., 1904), p. 418.

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- 40 Ibid.
- 41 Ibid.
- 42 Randall, Constitutional Problems, p. 495.

- 43 Ibid., pp. 519-520.
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